

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.206 OF 2025
WITH
INTERIM APPLICATION NO.6576 OF 2025
IN
APPEAL FROM ORDER NO.206 OF 2025**

M/s. RABIS INN
through owner/occupier
Vijayan K.H. Pillai

...Appellant

V/s.

Municipal Corporation of Greater
Mumbai

...Respondent

Mr. Rahul Pandey with *Ms. Suchitra Pandey & Ms. Pramila
Prajapati for the Appellant.*

Mr. Som Sinha with *Mr. Om Suryavanshi for Respondent -BMC.*

CORAM: SANDEEP V. MARNE, J.

Dated: 25 March 2025.

P.C.:

1) The Appeal challenges order dated 7 March 2025 passed by the learned Judge of the City Civil Court, Mumbai, refusing to grant ad-interim relief in respect of the proposed demolition action in pursuance of the Notice dated 14 December 2023 issued by the Municipal Corporation of Greater Mumbai (MCGM) under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1888.

2) I have heard Mr. Pandey, the learned counsel appearing for the Appellant and Mr. Sinha, the learned counsel appearing for the Respondent -MCGM.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Appellant has adopted a defence that the suit structure is in existence prior to the datum line of 1 April 1962. In support, the Appellant has relied upon order dated 28 October 1970 passed by the Additional District Deputy Collector, Bombay Suburban District, Andheri, granting permission for non-agricultural use of the land. My attention is drawn to the relevant portion of the said order, which records that the land was being used for non-agricultural purposes by constructing a structure for residential use by Shri/Smt. C.B. Sharma since 1960, who was occupying the said structure. It is on the basis of the order dated 28 October 1970 that it is sought to be suggested that the structure has existed since 1 August 1960. However, the impugned notice shows that what stood at the site as on 14 December 2023 was structure comprising of ground plus two upper floors. *Prima facie* therefore the structure existing at the site does not match with the structure described for residential use in the Collector's order dated 28 October 1970. Reliance by the Appellant on the Collector's order is also contrary to the assessment bills prepared by Respondent -MCGM. It appears that the relevant assessment bills show existence of 'AC Roof Shed as Garage'. Thus as per the

municipal assessment sheet also, the structure had clearly undergone a change from residential use to that of AC roof shed, which has been used as a garage. Today what stands on the site is a Hotel comprising of ground plus two upper floors. To make the case of the Appellant worse, Plaintiff's Architect has issued certificate dated 28 February 2021 certifying that construction of the structure comprising of ground plus two floors was completed on 28 February 2021. Admittedly, no development permission was secured before undertaking the construction of ground plus two floors structure, which got completed on 28 February 2021. It therefore *prima facie* becomes difficult to believe that the structure as it stands today also existed at the site prior to the datum line.

4) Appellant has apparently undertaken construction of a new structure in February 2021 without obtaining development permission. No *prima facie* case therefore exists in favour of the Appellant for grant of ad-interim relief in his favour. The learned Judge of the City Civil Court, Mumbai has rightly refused to grant ad-interim injunction in favour of the Appellant. No interference is warranted in the impugned order. It appears that during pendency of the present appeal, the structure has partially been demolished. Appeal is accordingly **rejected**.

5) Interim application stands disposed of.

[SANDEEP V. MARNE, J.]