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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 228 OF 2025
WITH
INTERIM APPLICATION NO. 7170 OF 2025**

Shubhashchandra Bhechan Sharma ... Appellant/Applicant

vs.

Municipal Corporation of Greater ... Respondent
Mumbai

Mr. Dhananjay R. Singh i/b. Shailesh Rai for Appellant.

Mr. Om Suryavanshi for Respondent-BMC.

CORAM : GAURI GODSE, J.

DATED : 7th MAY 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the plaintiff to challenge the order passed by the City Civil Court dismissing his notice of motion for protection from implementation of the notice issued under Section 314 of the Municipal Corporation Act, The notice is dated 4th July 2024. The notice of motion was filed to protect the suit structure. The notice of motion is dismissed by the City Civil Court. Hence, this appeal by the plaintiff.

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2. Admittedly, the suit structure stands on the pavement, hence the corporation issued notice under Section 314 of the Mumbai Municipal Corporation Act, 1888 (**'MMC Act'**), stating that the plaintiff's structure measurement 2.00 x 1.5 meters is the unauthorised structure standing on pavement, which is causing obstructions to the pedestrian. Hence, the plaintiff was called upon to submit the documents to support the existence of the structure on the pavement. The plaintiff filed reply to the notice by contending that his structure is standing since 1986 and he is using structure as a shop. The plaintiff contended that his structure is therefore protected. Alongwith the reply, the plaintiff submitted the necessary documents as per the list stated in the reply.

3. The corporation considered the document and the reply filed by the plaintiff and passed a speaking order on 18th February 2025. Each of the documents relied upon by the plaintiff was considered by the corporation. The concerned Assistant Engineer, who passed the speaking order concluded that none of the document indicates that the corporation had granted any permission for the construction of the stall on the pavement. The speaking order further records that there was no license issued under Section 313 (a)(b) of the MMC Act. Hence, the plaintiff's claim to seek protection or benefit under the circular dated 5th October 2015, was held to be not applicable to

the plaintiff. Thus, the plaintiff was directed to remove his structure from the pavement. Being aggrieved by the notice and the speaking order, the plaintiff therefore filed a suit.

4. The prayers in the notice of motion were opposed by the corporation by filing reply. It is contended by the corporation that in the absence of any license under Section 313 of the MMC Act, the plaintiff would not be entitled to any protection for the structure standing on the pavement. The corporation further contended that the structure was required to be removed as it falls in the alignment of CC Road (Cement Concrete Road) and SWD (Storm Water Drainage) construction as the connectivity of the drain is not be established due to the said structures. The corporation further contended that all the necessary procedures as contemplated under Section 314 of the MMC Act were conducted. Thus, it was contended that the plaintiff would not be entitled to retain the structure on the pavement.

5. Learned judge of the City Civil Court considered the submissions made on behalf of both the parties and after examining the rival contentions, refused to grant discretionary relief of injunction. Learned judge observed that the documents relied upon by the plaintiff were pertaining to the year 2023 to 2024 with regard

to the electricity bill. Regarding the agreement relied upon by the plaintiff to substantiate his rights on the suit structure through the original holder, the learned judge observed that the copy of the agreement and payment receipts alongwith the affidavit did not indicate that the structure was protected. The copy of the agreement and affidavit dated 16^h February 1996 and the copy of the trade license is dated 4th October 2001. Hence, the learned judge observed that the document did not indicate that the suit structure is in existence prior to the datum line i.e. 1st April 1962.

6. The contentions raised on behalf of the plaintiff regarding survey/censor conducted in the year 2000 was also considered by the learned judge. It is held that the receipt relied upon by the plaintiff to support existence of the structure in the year 2000 was issued on 26th July 2000. However, in the absence of any policy regarding the survey/censor relied upon by the plaintiff, he cannot continue the suit structure on the pavement. Thus, after considering the documents relied upon by the plaintiff, the learned judge refused to grant any protection as there was no prima facie documents to indicate that the plaintiff's structure was either protected under any policy or there was any permission granted to continue with the structure on the pavement.

7. Learned counsel for the appellant submitted that the suit structure is standing on pavement and thus, it stands on the municipal land, and it has to be deemed that the pavement where suit structure is situated is a slum. Hence, he submits that the plaintiff would be entitled for protection under the circular granting benefit to the structure standing in the slum area prior to 1st January 2000. Learned counsel for the appellant to support his submissions relied upon the order dated 29th November 2023, passed by this court in Appeal from Order No. 268 of 2019. He submits that in a similarly situated case, this court held that the structure standing on municipal land would be protected under the government policy dated 16th May 2015, granting protection to the structure in a slum area prior to 1st January 2000.

8. Learned counsel for the appellant therefore submitted that considering the view taken by this court in Appeal from Order No. 268 of 2019 even, the plaintiff's structure is protected as it is censored by the corporation in the year 2000. Learned counsel for the appellant thus, submits that the suit structure is protected as it is in existence prior to 1st January 2000.

9. Learned counsel for the appellant also relied upon the policy of the corporation granting benefits by way of alternate

accommodation, if the structure causes obstruction to the traffic. He relied upon the circular dated 20th March 2017, providing the policy guidelines for removal of bottlenecks/missing links of DP road and TP roads and RL.

10. Learned counsel for the appellant submits that even under circular dated 28th March 2017, the plaintiff's structure is protected and thus, he would be entitled to alternate accommodation as the corporation has alleged that the structure standing on the pavement is causing obstruction. Learned counsel for the appellant relied upon the document that was produced by the plaintiff before the corporation. He submits that the documents indicate that the structure is standing prior to 1st January 2000 and thus, the plaintiff would be entitled to lead evidence, to support his submissions that the structure though standing on the pavement, is protected under the policy issued by the State Government and the corporation. He thus, submits that the plaintiff would be entitled to interim protection during the pendency of the suit.

11. Learned counsel for the corporation supports the observations made in the speaking order. He submits that the pavement is not declared as slum. He submits that the receipts relied upon by the plaintiff to support his contentions that there was

any survey or censor carried out by the corporation would not indicate that the pavement is declared as slum. He thus, submits that the plaintiff would not be entitled to any protection under the circular protecting structure in the slum area. Learned counsel for the corporation further submits that the policy of the corporation as per the circular dated 20th March 2017, would not be applicable to the plaintiff's structure as it does not fall in the eligibility criteria. He further submits that admittedly, there was no license issued under Section 313 of the MMC Act. Hence, the plaintiff's structure according to the learned counsel for the corporation is not protected under any of the policy. He thus, submits that the observations by this court in Appeal from Order No. 268 of 2019 would not assist the plaintiff's contentions.

12. I have perused the papers of the appeal. Admittedly, the suit structure stands on the pavement. Admittedly, there is no license issued in respect of the suit structure under Section 313 of MMC Act. The documents relied upon by the plaintiff does not refer to any permission granted for constructing stall or shop on the pavement.

13. I do not find any substance in the arguments raised on behalf of the appellant, that in view of the receipt relied upon by the plaintiff indicating that a survey was carried out by the corporation, the

pavement is deemed to be a slum. Nothing is shown on record to indicate that the structure is in declared slum area. Hence, prima facie there would be no reason to apply the benefits granted to the structure standing prior to 1st April 2000 in the slum area.

14. So far as circular dated 20th March 2017 is concerned, clause (7) of the circular provides for eligibility criteria. Category A provides eligibility for authorised structures, tolerated structures, residential existing prior to 1st April 1964 and commercial existing prior to 1st April 1962. Category B describes eligibility for the structures protected under slum identification in slum area. Hence, in view of the aforesaid facts, the plaintiff's structure does not fall under any of the eligibility criteria under circular dated 20th March 2017.

15. In view of the facts of the present case, the observations of this court in Appeal from Order No. 268 of 2019 would not be of any assistance to the arguments made on behalf of the appellant. In the facts of the case in Appeal from Order No. 268 of 2019, the structure was erected on the municipal land and the plaintiff had relied upon photopass issued indicating the structure existing on the slum area. In the facts of the said case, the plaintiff had also relied upon license issued under Section 313 of the MMC Act. Thus, considering the facts in that case, this court recorded that the prima

facie findings that the plaintiff in that case would be entitled to protection at the interim stage. Thus, the observations made by this court in the facts of the case, cannot be a ground to grant any interim protection in different facts of the present case.

16. There is no grievance about the procedure followed by the corporation for invoking Section 314 of MMC Act. In the facts of the present case, for all the structures on the pavement, the corporation has initiated action for CCR and SWR construction for the purpose of connectivity of the drainage. The corporation has therefore followed due process of law for removing obstruction on payment that causes nuisance to the passerby and pedestrian. There is substance in the submissions on behalf of the corporation that the suit structure is causing obstructions on the pavement and to the work of storm water drainage.

17. Thus, considering the facts of this case, it was also argued on behalf of the corporation that the work of storm water drain is required to be completed before the monsoon commences, as obstruction on pavement and obstruction because of the work of storm water drain causes flooding in the locality. Thus, no fault can be found in the due process followed by the corporation to remove the structure on the pavement. I do not find any illegality or

perversity in the reasons recorded by the concerned judge of the City Civil Court to refuse grant of any injunction which is in the form of any discretionary relief.

18. For the reasons recorded above, there is no merit in the appeal. Hence, the appeal is dismissed.

19. In view of dismissal of the appeal, the pending applications are disposed of as infructuous.

(GAURI GODSE, J.)