

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 404 OF 2025
WITH
INTERIM APPLICATION NO. 10088 OF 2025

Rahul Siddharth Malwade

Appellant

.. (Org. Plaintiff)

Versus

Municipal Corporation of Greater Mumbai &
Ors.

Respondents

.. (Org. Defendants)

.....

- Mr. Yatin Malvankar a/w Mr. Ayush Geriya i/by Mr. Janmejy Singh, Advocates for Appellant
- Mr. Om Suryavanshi, Advocates for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 11, 2025

P. C.:

1. Heard Mr. Malvankar, learned Advocate for Appellant and Mr. Suryavanshi, learned Advocate for Respondents Corporation.

2. Challenge in the present Appeal from Order (AO) is to the order dated 08.07.2025 passed by learned Trial Court in Notice of Motion No. 3538/2025 in LC Suit No. 1440/2025 which challenges the notice issued by Corporation dated 25.04.2025 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "**the said Act**") and further speaking order dated 18.06.2025. The impugned order, Notice of Motion and speaking order are appended to the present AO. Mr. Malvankar has taken me through them.

3. *Prima facie* it is seen that Appellant - Org. Plaintiff seeks claim to 3 rooms which are Room Nos. 19, 20 and 21. Case and allegation against the Plaintiff in the impugned notice is that Plaintiff replaced the wooden partition by a glass partition, *inter alia*, separating the 3 rooms. Therefore Notice dated 25.04.2025 is issued by Corporation. Record clearly shows that Plaintiff has filed a detailed reply to the said Notice of Motion, *inter alia*, stating the need and necessity to replace the wooden partition due to corrosion and repairs. Said reply filed before the Competent Authority is dated 06.05.2025. Plaintiff also filed detailed written arguments dated 05.07.2025 before the Trial Court explaining the aforesaid details. However the impugned order has been passed without granting hearing to the Plaintiff.

4. Mr. Malvankar in his usual fairness has drawn my attention to the provisions of Section 351(1A) of the said Act and would submit that the said provision gives discretion to the Competent Authority to grant a hearing in view of the word "or" appearing in the said provision. He would however submit that principles of natural justice would entail that when such drastic course of action is adopted by a Government Body, *inter alia*, leading to demolition / removal and interference with a dwelling house of the citizen, it is incumbent upon the concerned Authority to grant hearing. He would submit that guidelines issued by the Corporation in its recent Circular dated

24.04.2025 pursuant to the decision of the Supreme Court dated 17.12.2024 in Civil Appeal No. 14604 of 2024 and companion Civil Appeal under Article 142 of the Constitution of India have not been taken into account either while issuing the impugned notice as also while passing the speaking order. He would fairly submit that the impugned notice was issued one day after the issuance of the circular by Corporation itself. However substantive right of Plaintiff has been denied to them to place on record the contents of the Corporation's Circular which would enure to the benefit of the Plaintiff. He would also attempt to argue on merits but this Court cannot be a fact finding Court in the first instance especially when the opportunity of hearing has been denied to the Plaintiff in the facts and circumstances of the present case.

5. I have perused the impugned order as also details of existence of the structure prior to the datum line but it would be appropriate if the Corporation grants a hearing to the Plaintiff to place on record the material evidence justifying existence of the structure prior to the datum line as also assessment bills standing in the name of the predecessor of the Plaintiff and thereafter pass an appropriate speaking order.

6. Mr. Suryavanshi, learned Advocate for Corporation would however vehemently oppose to grant relief to the Plaintiff on the

ground that Plaintiff has taken his chance before the Competent Authority by filing a detailed reply as also before the Trial Court by filing written arguments which have not found favour with the Competent Authority while passing the impugned order and with the learned Trial Court while rejecting interim relief.

7. *Prima facie* after going through the pleadings, I find that there are substantial documents on which Plaintiff seeks to place reliance on. This has not been considered by the learned Trial Court, therefore I am not inclined to accept the submissions made by Mr. Suryavanshi and more specifically so in the facts and circumstances of the present case. However without delineating any opinion on merits, I direct the authorized officer of the Corporation to grant a hearing to the Plaintiff for determination of the notice dated 25.04.2025 and after considering the written reply and hearing the Plaintiff, pass a speaking and reasoned order thereafter. Denial of opportunity of hearing in the facts and circumstances of the present case in my opinion, *prima facie*, violates the principles of natural justice inasmuch as discretion given to the Competent Authority under the provisions of Section 351(1A) will have to be construed in a manner and fashion so as to deliver complete justice by following the principle of *audi alteram partem*. The word "or" appearing in Section 351 in my opinion in the facts and

circumstances of the present case would thereafter have to be read as "and" so as to do complete justice to the citizen.

8. Mr. Malvankar at this stage interjects the Court and informs that the Circular dated 24.04.2025 issued by the Corporation itself contemplates giving of a hearing to the affected citizen in such a case.

9. In view of the above observations and *prima facie* findings, impugned order dated 08.07.2025 is quashed and set aside. Corporation is directed to give a hearing to the Plaintiff on the impugned notice and only after giving an opportunity of hearing, pass a reasoned speaking order. Needless to state that if Plaintiff desires to file any further affidavit of documents before the Corporation, he is permitted to do so. Plaintiff is permitted to file additional affidavit along with documents within a period of 4 weeks from today. The authorized officer of the Corporation is directed to give a hearing to the Plaintiff within a period of 4 weeks thereafter.

10. While determining the notice, Corporation shall not be influenced by any of the observations and findings either in the impugned order which has been set aside by this Court or this order and the matter will be decided strictly in accordance with law on the merits of the Plaintiff's case.

11. All contentions of the parties are expressly kept open.

12. In view of this order, LC Suit No. 1440/2025 pending before the learned City Civil Court, Mumbai stands disposed.

13. Appeal from Order is disposed. Interim Application is also disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.09.11
19:44:51 +0530