

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 860 OF 2025
WITH
CIVIL APPLICATION NO. 7318 OF 2025
IN
FIRST APPEAL NO. 860 OF 2025

Shahnaz Irfan Shaikh and Others. ...Appellants.

Versus

Municipal Corporation of Greater Mumbai & ...Respondents.
Another.

Mr Dharam Gandhi, *i/b Bharat Puneekar, for the Appellants.*
Ms Pallavi Khale, *for the Respondent-Corporation.*
Ms Priyanka R Kanaujiya, *with Sunil Kanaujiya, for Respondent*
No. 2.

CORAM: Sharmila U. Deshmukh, J.
DATED: April 16, 2025.

P.C.:

1. The First Appeal has been preferred against the Judgment dated 6th January 2025 passed by the Trial Court dismissing the Suit.

2. The facts of the case that the L.C. Suit No. 2330 of 2012 was filed challenging the notice dated 16th June 2012 issued under Section 351 of the Mumbai Municipal Act, 1888 ("**MMC Act**") and the order dated 28th August 2012 passed thereon and for injunction.

3. The case of the Plaintiff was that he is the owner of the notice structure described as ground plus upper floor, situated at Room No. 1, Abba Gani Chawl, Opposite New Mills Road, Tanaji Chowk, Kurla (West), Mumbai 400 070, which structure was constructed 40 years ago. It was pleaded that the Plaintiff had obtained Radio License dated 9th February 1996 which was renewed and on 29th November 1990 he had applied for Photo Pass as the suit structure was situated on Government land. It was further pleaded that during the survey by the Collector Office the structure has been renumbered as House No. 1.

4. The Defendants did not file their Written Statement.

5. The Plaintiff examined himself and deposed as to the contents of the plaint. In addition to oral evidence, he produced the original Radio License bearing No. 3768- Exhibit-14, original receipt of Photo Pass- Exhibit-15, original application for Photo Pass- Exhibit-16, copy of the notice dated 16th June 2012 issued under Section 351 of the MMC Act- Exhibit-17, copy of the Reply dated 26th June 2012-Exhibit-18 and copy of the order dated 28th August 2012- Exhibit-19.

6. In cross-examination by Defendant No. 1, he has deposed that in 1960, the suit premises was made of wood and iron patra. He has admitted that his father constructed ground plus first structure in the year 2001 and he did not receive permission regarding the said structure. He has further admitted that the sketch in the notice issued under Section 351 is in consonance with the structure.

7. The Trial Court upon consideration of the documentary evidence held that the Plaintiff has neither produced the Photo Pass or the Government Gazette showing that the notice structure is situated in slum area and none of the documents relied upon by the Plaintiff establishes the existence of notice structure prior to the datum line of 17th April 1964 and dismissed the suit.

8. Learned Counsel appearing for the Appellant submits that the Plaintiff had led oral evidence which stood uncontroverted as no evidence was led by Defendants. He points out that the Radio License was issued in the name of the Plaintiff at Exhibit 14. He further submits that the Trial Court misinterpreted the admission in the cross-examination as PW1 had deposed that in the year 1960, the suit premises was made of wood and iron patra has to read with the admission that his father had constructed the ground plus first floor structure to mean that the structure was in existence since the year 1960.

9. I have perused the record and considered the submissions.

10. The notice under Section 351 of the MMC Act issued by the Corporation to the Plaintiff was addressed at Opposite Room No 74, Nancey Chawl, New Mills Road, Kurla (W), Mumbai 400 070. The unauthorised construction described in the schedule to Section 351 notice was the unauthorised construction of ground plus one upper floor structure made up with Brick Masonry wall, Ladi Coda Slab at Ground Floor and A.C.Sheet atop First Floor. The sketch which forms part of the Section 351 notice shows

that the notice structure is situated opposite Room No 74. The burden was therefore upon the Plaintiff to establish that the notice structure, i.e., the structure opposite to Room No. 74 was constructed prior to 1964, i.e., the datum line. Irrespective of the fact whether the Defendants have stepped into the witness box or not, the burden was required to be discharged by the Plaintiff.

11. To discharge the burden, the Plaintiff has relied upon documentary evidence. The Radio License bearing No. 3768 issued in the name of the Plaintiff shows that the address in the said license is Room No. 74, Abdul Gani Chawl. It is an admitted position that the notice structure is located opposite Room No. 74 and therefore the issuance of the Radio License on 9th February 1966 at an address different from the notice structure does not prove the existence of the notice structure in the year 1966. The admission given by PW-1 in the cross examination that his father constructed the ground plus first floor structure in the year 2001 demolishes the case of the Plaintiff. Though learned Counsel appearing for the Plaintiff would attempt to salvage the situation by pointing out the previous admission that in the year 1960, the suit premises was made of wood and iron patra, the notice structure is a ground plus one storey which is different from the wood and patra structure referred to by the Plaintiff. There is clear admission in the cross-examination that the notice structure was constructed in the year 2001.

12. The Corporation by the impugned order has considered the documents produced by the Plaintiff in response to the Section 351 notice and has rightly concluded that the documents

does not prove the existence of the notice structure prior to the datum line. There is not a single documentary evidence produced by the Plaintiff to establish existence of structure prior to the year 1964. Before this Court, there is no material demonstrated from the oral and documentary evidence to show the existence of notice structure prior to the datum line. The oral deposition is not sufficient to discharge the burden when vital admission of the date of construction of notice structure in the year 2001 has been elicited in the cross examination. In event, the notice structure was in existence prior to 1964, there would be some documentary evidence such as electricity bill, water connection, etc. which would demonstrate its existence prior to the datum line. The documents produced pertain to Room No. 74 and not in respect of the notice structure.

13. The Trial Court has rightly considered the oral and documentary evidence and held that the Plaintiff has failed to prove the existence of the notice structure prior to the datum line, and as the notice structure is neither authorised nor tolerated structure, the same cannot be protected.

14. In light of the above, the First Appeal is devoid of merits and stands dismissed. The Interim Applications, if any, do not survive for consideration and stand disposed of.

(Sharmila U. Deshmukh, J)