

ANANT
KRISHNA
NAIK

Digitally
signed by
ANANT
KRISHNA
NAIK
Date:
2025.06.30
12:47:42
+0530

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

**INTERIM APPLICATION NO. 8452 OF 2025
IN
FIRST APPEAL NO. 861 OF 2018**

Shri. Ganesh Dostana Seva Mandal ..Applicant
Versus
The Brihanmumbai Mahanagarpalika ...Respondent

Mr. S. P. Shrivastava for the Applicant.

CORAM : M. M. SATHAYE, J.

DATED : 27th JUNE, 2025

P.C.:

1. Heard the learned Counsel for the Applicant/Appellant.
2. This Application is filed seeking directions to the Respondent-Corporation to remove the structure allegedly constructed on the suit premises and for injunction against the Corporation from carrying out construction or change of status of the suit premises.
3. The Applicant himself has stated in the application that suit structure is demolished way back on 03.02.2006. The Applicant has produced an answer received through Right to Information (RTI) query, obtained by one of the stated devotees of the Appellant. The RTI reply dated 25.02.2022 annexed to the Application at page 13 (Exh.D) itself indicates that as per

records available with the Respondent – Corporation, no demolition of ‘structure mentioned in the subject matter of the referred RTI Application’ was carried out. It is alleged on 01.04.2025 the Applicant ‘found’ 2 temporary structures on the suit premises. If according to the document relied upon by the Applicant himself, the demolition was not carried out, then his own contention that it is demolished runs contrary. Dates narrated above indicate long periods of break and what might have transpired in between requires fresh evidence.

4. Perusal of the impugned judgment shows that the Suit was filed challenging the notice issued under Section 314 of the Mumbai Municipal Corporation Act which means that the suit structure was on street / open channel / drain / well / tank contrary to the provisions of Section 312 of the said Act. The Suit is dismissed by holding that the Applicant could not prove that the suit structure was authorized or tolerated as per policy.

5. Since the nature of the Suit Notice itself indicates that the Suit premises were on street / open channel / drain / well / tank and since the suit is dismissed, there is nothing on record as on today to indicate exclusive right of the Applicant over the suit premises. No fresh enquiry into new facts can be undertaken first time, in the pending first appeal.

6. In that view of the matter, there is no merit in the Interim Application. The Interim Application is dismissed.

7. Needless to mention that if the Applicant has any fresh cause of action under the said RTI query and its reply, it can adopt appropriate proceedings in accordance with law.

(M. M. SATHAYE, J.)