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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 496 OF 2025
WITH
INTERIM APPLICATION NO. 11464 OF 2025
IN
APPEAL FROM ORDER NO. 496 OF 2025

Ashish Kumar Harihar Chaurasia .. Appellant
Versus
Municipal Corporation of Greater Mumbai .. Respondent

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- Mr. P.J. Thorat a/w Mr. J.S. Yadav i/b Mr. B.P. Shukla, Advocate for Appellant.
 - Ms. Neeta Jadhav i/b Ms. Komal Punjabi, AGP for Respondent – Brihanmumbai Municipal Corporation.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 11, 2025.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Appellant and Ms. Neeta Jadhav, learned AGP for Respondent - Brihanmumbai Municipal Corporation.

2. Present Appeal from Order is filed challenging Order dated 18.08.2025 passed by the City Civil Court, Dindoshi in Notice of Motion No. 765 of 2020. The Order is appended at Page No. 11. It is filed along with Interim Application seeking grant of interim injunction restraining Respondent from demolishing the suit property.

3. Briefly stated, Appellant is in possession of and runs a shop under the name and style of M/S Chourasiya Pan Bidi & General Stores

situated at Goregaon Sports Club, near Toyota Showroom, Link Road, Malad West, Mumbai 400064 (for short “**suit shop**”). It is Appellant’s case that suit shop was established and previously run by his father however, due to old age Appellant’s father went to his native place and Appellant is now running suit shop. It is Appellant’s case that government documents are issued in suit shop’s name being Census Certificate, photopass and Census receipt, BMC License, Registration Certificate under Food and Drugs Administration Authority, Health Renewal receipt from Health Department, Certificate under Shops and Establishment Act, property tax assessment bill and Udyog Aadhar Certificate which justify its existence prior to the datum line.

3.1. On 20.02.2020, an officer of P/North Ward Office of Respondent visited the suit shop and orally threatened Appellant with its closure and demolition. Appellant orally informed Respondent’s officer that the suit shop was in existence since 1976 and was granted several licenses by Respondent – Corporation and other State and Central Government authorities. Respondent officer refused to listen and reiterated that demolition of suit shop will proceed.

3.2. Appellant apprehending coercive action by Respondent, filed LC Suit No. 471 of 2020 in City Civil Court, Dindoshi seeking permanent injunction to restrain Respondent, their agents, servants, employees and assignees from demolishing the suit shop along with

Notice of Motion No. 765 of 2020 seeking temporary injunction against any such action. Notice of Motion No. 765 of 2020 was rejected by order dated 18.08.2025 by City Civil Court, Dindoshi declining interim injunction against Respondent. Being aggrieved, Appellant filed present Appeal from Order challenging order dated 18.08.2025.

4. Mr. Thorat, learned Advocate for Appellant would submit that impugned order is illegal, bad in law and passed without consideration of material on record. He would submit that suit shop was started several decades ago outside Goregaon Sports Club, Malad West, Mumbai 400064 by Appellant's father. He would also submit that on account of old age, Appellant's father returned to his native place and presently Appellant is running the suit shop.

4.1. He would submit that Respondent issued license setting out the nature and status of suit shop in Appellant's name. He would also submit that various other licenses were issued by Respondent in Appellant's name with respect to suit shop being Health Department License dated 24.12.2019 and 27.12.2024; Shops and Establishment License dated 08.03.2019 as well as property tax bill dated 21.06.2023. He would submit that Appellant is also paying electricity bill with respect to suit shop and latest electricity bill is appended at page No. 33.

4.2. He would submit that in addition to licenses issued by Respondent, several certificates and licenses were issued by various State Government and Central Government authorities as well. He would submit that when census was being conducted in 1976 the existence of suit shop was recorded in the survey and according to Census Certificate No. PXC-103 1/1A was issued on 17.10.1976 by Office of Controller of Slums of Bombay and BSD. He would submit that Slum Identity Certificate bearing receipt number 1165907 was issued on 01.08.2000 in the name of Appellant's father. He would submit that when Appellant began running suit shop, State Government's Food and Drug Administration issued registration certificate dated 08.03.2019 bearing name and address of Appellant and suit shop and Central Government issued Udyog Aadhar Registration Certificate to Appellant on 25.05.2019. He would also submit that Respondent issued property tax assessment bill and Shops and Establishment License to Appellant.

4.3. He would submit that on 20.02.2020 i.e. 5 years ago, Respondent's officer attached to P North Ward visited the suit shop and threatened to remove and demolish the same unless Appellant removed it on his own accord. He would submit that Appellant informed the officer that there are several licenses issued since 1976 till date by Respondent, State Government and Central Government in his name as well as his father's name with respect to suit shop which

prove its existence. He would submit that Appellant demanded the officer to produce notice for demolition however the officer did not produce the same neither did he listen to Appellant and instead demanded Appellant to remove the suit shop or it would be demolished. He would submit that Appellant apprehended Respondents actions on instigation and at the behest of some interested person.

4.4. In support of his submissions, Mr. Thorat has referred to and relied upon the decision of this Court in the case of *Abdul Hasan Shaikh Mansuri V/s Mun. Corp. of Mumbai & Ors.*¹, to contend that impugned order was passed without adherence to law and deserves to be dismissed.

5. *PER CONTRA*, Ms. Jadhav, learned AGP on behalf of Respondent, would oppose the Appeal From Order and submit that at the outset, Appellant did not issue statutory notice under Section 527 of Mumbai Municipal Corporation Act, 1888 (for short “**MMC Act**”) to Respondent before filing suit against them and on this ground alone Appeal deserved to be dismissed. She would submit that Section 312 of MMC Act precludes any person from erecting any structure or fixture of any nature irrespective of size and shape over any open channel, drain, well or in the street which causes an obstruction. She would submit that the provision also prohibits all encroachment, projection or

¹ 2006 SCC OnLine Bom 234

occupation on street, channel, well or tank and the same can only be allowed with permission from Commissioner under Sections 310 and 317 MMC.

5.1. She would submit that Section 313 MMC Act states written permission is required from Commissioner to place any stall, chair, bench, box or any other object which may cause encroachment on street or any other public place. She would submit that Appellant has failed to produce permissions / license granted under Sections 310, 312, 313, 313A and 317 of MMC Act on record and hence the suit shop is illegal and liable to be demolished. She would submit that photographs filed by Appellant show that the suit shop is situated on a narrow footpath and hence it causes hindrance and obstruction to public at large. She would submit that Appellant did not mention the name or designation of Respondent's officer who visited and threatened him.

5.2. She would submit that Appellant has not produced any sanctioned map / plan of the suit shop and has instead only produced hand-drawn / rough plan which is untenable in law.

5.3. She would submit that none of the documents appended by Appellant pertain to the suit shop or constitute a license for sale as required under Section 312 and 313(A) of MMC Act. She would submit that none of the documents pertain to the suit shop and hence

City Civil Court, Dindoshi was correct to not consider the same to show legality of the suit shop. She would submit that Census Certificate No. PXC-103 1/1A issued on 17.10.1976 by Office of the Controller of Slums of Bombay and BSD does not pertain to the suit shop and as per Government Order dated 15.07.2000, Census Certificate and Photo Pass issued in 1976, 1980 and 1990 have been canceled hence Census Certificate of Appellant is invalid in law. She would submit that the Registration Certificate issued by Food and Drug Administration, Government of Maharashtra and Udyog Aadhar issued by Government of India do not prove legality of the suit shop. She would submit that save and except appropriate license issued under Sections 312 and 313(A) of MMC Act, no other document would give legal status to suit shop.

5.4. In support of her submissions, Ms. Jadhav has referred to and relied upon the following decisions of the Supreme Court *(i) Olga Tellis and Ors. V/s Bombay Municipal Corporation and Ors.*² and *(ii) MCGM and Ors. V/s. Rafiqunnisa M Khalifa (Deceased) through his Legal Heir Mr. Mohd. Muqueen Quershi and Anr.*³

6. I have heard Mr. Thorat, learned Advocate for Appellant and Ms. Jadhav, learned AGP appearing on behalf of Respondent - MCGM and with their able assistance perused the record of the case.

² (1985) 3 SCC 545

³ MANU/SC/0225/2019

Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. At the outset, present Appeal from Order arises out of order passed by City Civil Court, Dindoshi denying temporary injunction restraining Respondent from demolition of suit shop. It is seen that Appellant filed suit for permanent injunction against Respondent along with application seeking temporary injunction on the aforementioned grounds. It is seen that the claim which was to be decided in Order dated 18.08.2025 was limited specifically to whether Appellant was entitled to injunct the Respondents however City Civil Court, Dindoshi held that suit shop is unauthorized and rehabilitation may be provided to Appellant in accordance with Government policies. It is seen that in passing such an order order, the City Civil Court has virtually decided the legality of structure and rights of parties at an interim stage without trial and determined the suit itself.

8. It is seen that this Court has held that Courts cannot travel beyond the limited scope of the suit seeking to restrain authorities from taking coercive steps against the suit shop without following due process of law. In the present case, Respondent – MCGM seeks to dispossess Appellant from suit shop and demolish the same on the grounds that same is illegal and is an encroachment upon a narrow footpath, causing obstruction and deserves to be demolished. It is seen

that Respondent – MCGM has not issued any statutory notice as per law but instead resorted to mere threats to force Appellant to vacate the suit shop. This cannot be allowed and deserves to be nipped in the bud.

9. It is seen that suit shop was established by Appellant's father prior to 1976 and presently, business is carried on therein by Appellant. It is seen that Appellant has produced multiple documents issued by Central and State Government agencies to show that suit shop was established and was in existence. It is seen that Respondent has issued various documents in respect of suit shop which include Health Department license appended at page No. 31 to Petition, property tax assessment bill appended at page No. 32 to Petition, license stating nature and purpose of business run from suit shop as Pan Shop (Pan-patti) appended at page No. 55 to Petition.

10. Admittedly, these licenses stand in the name and address of suit shop and earlier licenses were issued in Appellant father's name and later licenses issued in Appellant's name. It is seen that since Respondent themselves have issued licenses and property tax bill to Appellant in respect of suit shop, Respondent has recognized the existence of the same and any change in status deserves to be proceeded with in accordance with law i.e. by issuing appropriate notice to Appellant and affording him opportunity of hearing and

thereafter pass an appropriate speaking order.

11. I am not inclined to accept the submissions made by Ms. Jadhav as Respondent themselves have issued licenses some of which are property tax assessment bill and Shops and Establishment License in respect of suit shop which are appended to the Appeal. It is seen that suit shop is not erected on open sewer, drain, well or in street neither has Respondent proved that suit shop is causing obstruction or inconvenience to general public. In this regard, Respondent has produced no complaint on record to show that suit shop restricts the movement of public on the footpath or that any obstruction is caused. Hence inference can be drawn at this stage that if suit shop was established illegally, Respondent would not have issued the aforementioned licenses.

12. The controversy in question before the City Civil Court pertained simplicitor to whether Appellant proved that he has a *prima facie* case, and whether balance of convenience lay in his favor and he would face irreparable loss if relief is not granted. However City Civil Court proceeded to decide the rights of parties agitating their claims in holding that suit shop is illegal and unauthorized without adjudication.

13. In this regard and in facts of the present case, I would like to quote paragraph 4 of a decision of this Court in the case of ***Abdul Hasan Shaikh Mansuri V/s. Mun. Corp. of Mumbai & Ors. (supra)***

decided on 02.03.2006 and relied upon by Mr. Thorat which aptly describes the facts of the matter before me and guides what the Court will have to do in such a case. The said paragraph reads as under:-

“4. The trial Court however, adopted specious reasoning that the agreement of sale relied by the appellant was not a registered document. This opinion overlooks that even such document can be relied in evidence for collateral purpose, though not for establishing title. The trial Court has then observed that the order of Tahasildar and the agricultural tax receipt cannot show legality of the structure. This opinion overlooks that the scope of receipt in the suit was very limited, namely, the Authorities should proceed against the suit structure by following the due process of law. It is too late in the day even for a private individual leave alone Statutory Authorities-such as the respondents to contend that it is open to dispossess any one from the property who is in settled possession thereof without following due process of law. It will be useful to refer to the case of (Krishna Ram Mahalev.Skobha Venkat Rao) reported in 1989 (3) Bom. C.R. 364 :(1989) 4 SCC 131. In para 8 of the reported decision it is observed that it is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. We may also refer to the case of (Anamallai Club v.Government of T.N.)2, reported in (1997) 3 SCC 169. It is held that a person in juridical possession cannot be dispossessed unilaterally without recourse to law, as law respects possession even if there is no valid title to support it. There is also authority on the point that even an encroacher is justified in making grievance that he should be heard before being dispossessed-See (Kanniappan v. A Perumal)3, reported in (2002) 10 SCC 98. Viewed thus, the fact that the suit structure is not legal or authorised cannot be the basis to throw out a suit simplicitor for a direction to the Authority to take action in regard to the structure by following due process of law. Assuming that without any written statement on record the respondent No. 1 could cross-examine the plaintiff witness; and on which evidence the trial Court has noted that the plaintiff has admitted that he has not documentary evidence to show that the suit structure was constructed by taking permission of the Corporation. Such inquiry and finding is traveling beyond the limited scope of the suit for direction against the Authorities to refrain from taking any action in respect of the suit structure except by following due process of law. The trial Court has then found that the appellant has not produced any assessment receipt to indicate that the suit structure was assessed and numbered in the municipal record. It is further observed by the trial Court that

the appellant failed to indicate the name of the officer who gave threats to the appellant on 24.1.2004 that he would take action in respect of the suit structure, which compelled the appellant to institute the suit on the basis of such apprehension without even complying with the formality of issuance of statutory notice under section 527 of the MCC Act. Suffice it to observe that, such approach to say the least, is impertinent to the point in issue.”

14. The words of this Court need reiteration to the present case viz. whether dispossession after due process of law is followed. This Court has held that Respondents – Statutory Authorities cannot arbitrarily demolish structures without affording hearing to Appellant against dispossession and demolition. It is trite law that a person cannot be dispossessed from property in which they are in settled possession for years together without following due process of law even if they have no right to remain on the property and this principle of law will apply even to encroachers as the law respects possession even if there is no valid title to support the possession. In the present case, suit shop is claimed to have been in existence since 1976, various licenses have been issued by Central and State Government agencies including Respondent’s themselves. In regard to the aforementioned decision of Supreme Court, it is fair and just for Respondent to issue written notice to Appellant, conduct lawful hearing and pass a well reasoned speaking order before demolition and removal of suit shop. The Respondent cannot act in a high – handed manner by issuing threats to Appellant to remove suit shop in the hope that Appellant would bow down to Respondent’s whims.

15. Taking into account the overall circumstances, impugned order dated 18.08.2025 passed by City Civil Court, Dindoshi in my opinion is beyond the scope of the claim before the Court. Order dated 18.08.2025 suffers from serious infirmities, bordering on complete arbitrariness, illegality, and is therefore not sustainable in law. In view of my above observations and findings, impugned order dated 18.08.2025 is quashed and set aside. In the light of facts in the present case, Resultingly the Appeal succeeds. However, this does not mean that the Court has accepted the case of Appellant as legal and valid. Appellant's suit is for permanent injunction on the basis of his long standing existence, possession and licenses issued to him regarding the suit shop. He will have to make good his case rather prove his case before the Court in his suit. He must face adjudication because it is contended by Corporation that the documentation produced by Appellant does not pertain to the suit shop. Hence after Appellant discharges this burden, the Corporation will have to lead evidence in rebuttal in support of its case against the Appellant. Suit is filed in 2020 and ad-interim order i.e. impugned order was passed recently.

16. Hence in view thereof the trial court is directed by this Court to proceed with the trial. The pending Notice of Motion before Trial Court is disposed of. Corporation shall file its Written Statement within 8 weeks from today. Thereafter the trial Court shall proceed with the trial expeditiously and determine the same preferably within 6 months

thereafter. All questions and issues of the Appellant and Corporation are expressly kept open in trial.

17. Until the trial is determined, the Corporation shall not take any coercive steps against the suit shop of the Appellant and for a further period of 2 weeks thereafter if the verdict in the trial court is adverse to the Appellant – Plaintiff.

18. In the event if Corporation decides to follow any rehabilitation / resettlement policy in the case of Appellant – Plaintiff subject to him succeeding in the suit, it shall be open to Corporation to take steps strictly in accordance with law.

19. Appeal From Order and Interim Application stands allowed in the above terms.

20. Appeal From Order and Interim Application are allowed and disposed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
UGALMUGALE
Date: 2025.09.26
10:33:33 +0530