

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 232 OF 2025
WITH
INTERIM APPLICATION NO. 7238 OF 2025

Shweta Arun Sathe

Appellant
.. (Org. Plaintiff)

Versus

The Mumbai Municipal Corporation of Greater
Mumbai & Anr.

Respondents
.. (Org. Defendants)

APPEAL FROM ORDER NO. 231 OF 2025
WITH
INTERIM APPLICATION NO. 7236 OF 2025

Arun Sopanrao Raikar

Appellant
.. (Org. Plaintiff)

Versus

The Mumbai Municipal Corporation of Greater
Mumbai

Respondent
.. (Org. Defendant)

.....

- Mr. Mohit Jadhav a/w Ms. Kajal Chourasiya & Mr. Manish Shirke,
Advocates for Appellant in AO 232/2025
- Mr. Sachin Vajale, Advocate for Respondent No. 1
- Mr. Joel Carlos a/w Mr. Rohit Pandey i/by Mr. Dinesh Dubey,
Advocate for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2026

P. C.:

1. Heard Mr. Jadhav, learned Advocate for Appellant / Plaintiff in Appeal from Order (AO) No. 232 of 2025; Mr. Vajale, learned Advocate for Respondent No. 1 and Mr. Carlos, learned Advocate for Respondent No. 2.

2. For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court

APPEAL FROM ORDER NO. 232 OF 2025:-

3. Present Appeal from Order (AO) is filed for assailing the impugned order dated 08.04.2025 passed in Notice of Motion No 2168 of 2025. However since reasoned copy of the said order was not available, this Court passed *ad-interim* order on 09.04.2025 in the AO directing not to take any coercive action against the Appellant implementing the impugned notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1988 (for short "**the Act**") and any steps taken in furtherance thereof.

4. The case of Appellant / Plaintiff is that she is entitled to shop No 5 admeasuring 266.30 sq.ft. in the suit property and claiming entitlement and eligibility. Corporation issued notice under Section 351 of the Act claiming that the entire construction of the shop premises of Plaintiff was illegal and therefore liable for demolition as also the fact that it was not constructed prior to the datum line. Learned Trial Court refused ad-interim relief by *prima facie* opining that Corporation has followed due process but held that it was unclear whether the notice structure was constructed prior to the datum line.

5. Mr. Jadhav, learned Advocate for Appellant / Plaintiff has galvanized the Plaintiff's case on the basis of substantial documentary evidence which was placed before the Trial Court and which is also part of record in the present AO, *inter alia*, to submit that Plaintiff's structure has been in existence and subsistence right since 1927 on the basis of substantive documentary evidence emanating from the record of Corporation itself. Rather it is seen that Plaintiff is not the only person in the entire suit property. Suit property is comprising of commercial / residential tenements of various parties and therefore eligibility of Plaintiff being threatened by virtue of the impugned action of the Corporation has driven the Plaintiff to safeguard her right.

6. *Prima facie* on the basis of the documentary evidence, Mr. Jadhav has made out an arguable case. However, Respondent No. 2 - Developer appointed by Corporation duly represented by Mr. Carlos is aggrieved with ad-interim order dated 09.04.2025 (Coram : Gauri Godse, J.) and its continuance, since redevelopment has been stalled because of the said order. He would be therefore persuade me to vacate the said order so that in the larger interest of all eligible tenants on the suit property, development is not hampered and equally Developer is also not put to any prejudice and any further financial losses.

7. The submissions made by Mr. Carlos are equally important and deserve to be considered but certainly right of Plaintiff is equally important. However when the matter was heard yesterday before me, after hearing the learned Advocates for the respective parties, Mr. Carlos on taking instructions and in his usual fairness on behalf of Respondent No. 2 - Developer informs and prays to the Court that the Developer is ready and willing to execute the Permanent Alternate Accommodation Agreement (**PAAA**) with the Appellant / Plaintiff and extend to the Plaintiff all benefits of eligibility as extended to all other tenants based on their existing eligible area in accordance with law.

8. Mr. Carlos has made his submissions good today when the matter is heard to enable the Developer to file appropriate affidavit-cum -undertaking to that effect. He has placed on record the affidavit-cum-undertaking dated 22.04.2026 verified by Mr. Shashank Maheshwari, partner of Respondent No. 2 – Developer, *inter alia*, stating that the Developer is ready and willing to execute PAAA with Appellant / Plaintiff in accordance with law. There are additional issues in the affidavit-cum-undertaking which also enure to the benefit of Plaintiff, they however incidentally will be subject to Plaintiff succeeding in the Suit pending before the Trial Court. Once the substantive relief to the Plaintiff stands assured by the Developer, insofar as the present AO is concerned, no further orders are required

to be passed, save and except to state that assurance given in the affidavit-cum-undertaking given to this Court shall be willfully obeyed and followed by him and he shall execute and register the PAAA with the Plaintiff in accordance with law forthwith.

9. In view of the above, order dated 09.04.2025 stands immediately vacated and affidavit-cum-undertaking is accepted by Court as undertaking given to this Court. The Developer is free to develop the subject property.

10. In view of the above order, Appellant / Plaintiff is directed to vacate and handover the subject premises and handover it to the Developer within a period of 15 days from today.

11. Liberty to apply in case of any difficulty.

12. All contentions of the parties are expressly kept open in the Trial Court.

13. Appeal from Order No. 232 of 2025 is disposed in the above terms. Pending Interim Application is also disposed.

APPEAL FROM ORDER NO. 231 OF 2025:-

14. Mr. Carlos also persuades me to consider that in AO No. 231 of 2025 filed by Appellant - Mr. Arun Sopanrao Raikar similar facts exist and this Court similarly passed order dated 09.04.2025. He would

submit that he has taken instructions in that matter also and has placed before the Court affidavit-cum-undertaking which is taken on record. Stand of the Developer is also identical in this AO as that of the earlier AO No. 232 of 2025. In that view of the matter, order dated 09.04.2025 passed in present AO concerning the present Appellant - Mr. Arun Sopanrao Raikar is also vacated. Needless to state that he will be entitled to the same relief and order which is passed in the case of earlier AO.

15. Today none is present for Appellant in AO No. 231 of 2025. Hence at the request of Mr. Carlos, Appeal from Order No. 231 of 2025 is adjourned to **24th April, 2026** under the caption **“for Orders”**. He is directed to intimate this order to the Plaintiff Mr. Arun Raikar and Plaintiff is directed to remain present in Court on next date.

[MILIND N. JADHAV, J.]

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