

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 181 OF 2026
WITH
INTERIM APPLICATION NO. 953 OF 2026
IN
APPEAL FROM ORDER NO. 181 OF 2026

Noor Khan and Anr.

Appellants /
.. Plaintiffs

Versus

Municipal Corporation of Greater Mumbai and
Anr.

Respondents /
.. Defendants

-
- Mr. Randhirkumar N. Mandal, Advocate i/by Pradyumna D. Sharma for Appellants.
 - Mr. Sachin Vajale, Advocate for Respondents – BMC.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 06, 2026.

P.C.:

1. Heard Mr. Mandal, learned Advocate for Appellants and Mr. Vajale, learned Advocate for Respondents – BMC. By consent of parties, Appeal From Order and Interim Application are both heard finally.

2. The present Appeal From Order assails the order dated 12.01.2026 passed in Notice of Motion No.3346 of 2023 in L.C. Suit No.2452 of 2023. Plaintiffs case is that they are residents of structure admeasuring 5350 sq. ft. comprising of 9 rooms situated in CTS No.250, Village Andheri and they have received notice under Sections 53, 54, 55 and 56 of the Maharashtra Regional and Town Planning

Act, 1966 (for short '**M RTP Act**') dated 09.08.2023 calling upon them to remove their structure, it being unauthorized development / construction.

3. Being aggrieved, Plaintiffs filed their response to the statutory notice dated 25.08.2023 and appended several documents in the nature of documentary evidence showing existence and subsistence of their structure on CTS No.250 since more than 60 years. Designated Officer considered the said documentary evidence and passed a speaking order dated 29.05.2025, copy of which is appended at page No.145 of the Appeal From Order, *inter alia*, holding that in order to treat the structure of Plaintiffs as authorized, Plaintiffs ought to have submitted permission from the Competent Authority obtained for construction of the said structure and since the same is not submitted, Plaintiffs' structure is unauthorized and it was directed to be removed within 24 hours.

4. Plaintiffs filed Suit before the Trial Court to challenge the impugned notice and order passed by the Designated Officer alongwith Notice of Motion No.3346 of 2023. By virtue of the impugned order dated 12.01.2026, Notice of Motion has been dismissed on the ground that Plaintiffs have not made out any *prima facie* case for grant of temporary injunction. Hence, present Appeal From Order.

5. When the matter was heard by this Court on 18.02.2026 and today, the learned Advocate appearing for Plaintiffs who are the Appellants before me was not in a position to pursue the Court on the basis of the documentary evidence appended to the Appeal From Order. This Court has perused the entire material placed on record. There is a reference to a previous Suit filed by Plaintiffs namely LC Suit No.3930 of 2003 in which Interim Application was taken out and interim order was passed on 19.08.2003, *inter alia*, for the same cause of action which is the subject matter of the *lis* in the present proceeding. Learned Advocate for Plaintiffs was unable to produce the copies of the Suit No.3930 of 2003 and expressed helplessness and sought time repeatedly.

6. Cause of action in the present proceedings emanate from the fresh notice issued by the Corporation under Section 55 of the MRTP Act copy of which is appended at page No.141 dated 09.08.2023 followed by speaking order dated 29.05.2025 passed by the Designated Officer, copy of which is appended at page No.145 of the Appeal From Order.

7. Perusal of the record which is appended to the Appeal From Order *prima facie* shows that Corporation has repeatedly issued similar notices to Plaintiffs since the year 1977 and no action of the Corporation has been fructified or being successful till date. The first

such notice issued by the Corporation to Plaintiffs is dated 11.08.1984, copy of which is appended at page No.84 of the Appeal From Order. Perusal of that notice *prima facie* shows that it is acknowledged by the Corporation in that notice that it had issued repair permission to the suit structure of Plaintiffs on 17.08.1977 which was found in the record of the Corporation. *Prima facie* this fact in itself shows that the suit structure is in existence from prior to 1977 atleast. This is not the only fact which persuades me to consider the case of the Plaintiffs. Factually speaking there is substantial rather overwhelming documentary evidence placed on record which shows that the suit structure was in subsistence and existence and constructed by the father of Plaintiffs sometime in the year 1970 on CTS No.250 at Andheri.

8. Record shows that CTS No.250 was standing in the name of Bombay Construction Company Limited which was involved in carrying out mining work in the city of Bombay at the then time. Plaintiffs' father Saheb Shah Sayyed Shah was appointed as a 'Mining Mate' who was involved and supervising various mining processes such as surface preparation, surveying, drilling, blasting, processing, dumping removal, tailing decommissioning and allied support services on behalf of the Company. Record *prima facie* shows that Plaintiffs' father was issued a Mining Certificate on 24.06.1977 under the Mines Act, 1952 by the Chairman of Board of Mining Examinations.

9. The documentary evidence pertaining to the Mining Certificate issued as also all the documents issued by the Office of the Controller of Slum, Bombay on 05.02.1980 followed by the first MCGM notice dated 22.06.1984 under Section 351 of the Mumbai Municipal Corporation Act, 1888 refer to subsistence and existence of the suit structure on CTS No.250, Old Survey No.105 belonging to Bombay Construction Corporation, Gaon Devi Road, Gilbert Hill, Andheri (West), Mumbai and are in the name of Plaintiffs' father or the Plaintiffs themselves.

10. Thereafter record shows that in the year 1970 mining work was shut down on discovery of the historic hill known as 'Gilbert Hill' in Mumbai which was declared as a Grade - II heritage structure leading to termination of all quarrying mining activities around the said monument. Plaintiffs' father alongwith his family thereafter settled on CTS No.250 in the suit structure and since then has been residing thereon.

11. What is intriguing is the fact that the construction of the suit structure was carried out on the basis of permission granted which is found acknowledged in the Corporation's notice dated 22.06.1984 which refers to the sanction and authorization given by Defendant – Corporation on 17.08.1977. It is due to this very reason that further action under the first statutory notice dated 22.06.1984 was not

pursued by the Corporation and it was dropped and withdrawn. That apart, there is further documentary evidence placed on record to show subsistence of the suit structure on CTS No.250, *inter alia*, occupied by Plaintiffs in the form of Electricity Bills, Ration Card, Bank Account Statements and substantial correspondence addressed to Plaintiffs in respect of their suit structure as also the record of census of the suit structure as a slum structure in the year 1976. It is the case of the Plaintiffs that the suit structure was acquired by the Plaintiffs' father Saheb Shah Sayyed Shah prior to 1964. Record of the census of the said structure carried out in the year 1976 *prima facie* shows the details of the entire family to be residing in the said suit structure and the minor ages of the Plaintiffs.

12. The aforesaid evidence is adequate at a *prima facie* stage to consider the case of Plaintiffs. By virtue of the impugned order, it is held that Plaintiffs have not been able to show the permission granted by the Municipal Corporation for construction of the suit structure. Suit structure is more than 5000 sq. ft. comprising of several rooms and *prima facie* documentary evidence reflect existence and subsistence of the suit structure prior to the year 1976.

13. In that view of the matter, *prima facie* case has been made out by Plaintiffs for grant of temporary injunction. Therefore the insistence of the learned Trial Court from Plaintiffs and asking them to

produce specific permission and sanction of the Corporation for construction of the suit structure on the basis of which the Notice of Motion has been rejected cannot be countenanced by this Court at the interim since it will jeopardized the substantive right of the Plaintiffs to reside in the suit structure which has been in subsistence since long.

14. Needless to state that Plaintiffs will have to prove their case on evidence. In that view of the matter, balance of convenience as also irreparable loss, both are in favour of Plaintiffs. One of the key reasons for dismissing the Motion of Plaintiffs by Trial Court is that Plaintiffs have not been able to show photopass issued by the Competent Authority under the Slum Act to seek protection for the suit structure as a slum structure. The Slum Act was enacted in the year 1971. Suit structure *prima facie* appears to be in existence according to Plaintiffs on the basis of the documentary evidence which is appended for the past more than 60 years i.e. from the year 1963 onwards.

15. That apart, reliance of the Plaintiffs on the letter dated 05.02.1980 which is appended at Exhibit 'G' – page No.81 to the Appeal From Order of which cognizance has been taken clearly shows the name of father of Plaintiffs as occupier of the censused structure, it shall therefore be available to the Plaintiffs to prove the said document in accordance with law on evidence. Case of Plaintiffs in the Suit filed cannot be therefore dismissed at the threshold.

16. In view of the aforesaid *prima facie* findings, I am of the considered opinion that the impugned order dated 12.01.2026 is not sustainable and deserves to be quashed and set aside. Hence, the impugned order dated 12.01.2026 is quashed and set aside.

17. Resultantly, Notice of Motion No.3346 of 2023 stands allowed.

18. No coercive steps shall be taken against the suit structure of the Plaintiffs until the final determination of the L.C. Suit No.2452 of 2023 strictly in accordance with law.

19. All contentions of Plaintiffs as well as Corporation are expressly kept open.

20. Appeal From Order is allowed and disposed in the above terms.

21. In view of the above order and disposal of Appeal From Order, pending Interim Application No.953 of 2026 is accordingly disposed.

[MILIND N. JADHAV, J.]

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