

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1202/2022
ALONGWITH
INTERIM APPLICATION NO. 19349 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 702 OF 2026
IN
FIRST APPEAL NO. 1202/2022**

SHAIKH TAHIR ALI IBRAHIM ALI

**..... APPELLANT/
APPLICANT**

VS

**THE MUNICIPAL CORPORATION OF
GREATER MUMBAI**

..... RESPONDENT

Adv. P. J. Thorat a/w. Adv. J. S. Yadav i/b. Adv. B.S.Shukla for the Appellant.

Adv. Pradeep M. Patil for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 30 JANUARY, 2026

P.C. :-

1) The present First Appeal is filed by the original plaintiff, challenging the judgment and order dated 1 October, 2022 passed by the Bombay City Civil Court, Greater Bombay in L.C.Suit No. 1257 of 2014.

2) The Municipal Corporation had issued a notice to the

plaintiff under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (in short 'MRTP Act') dated 26 June, 2013. To the said notice, the plaintiff filed his reply. Pursuant thereto, the Assistant Engineer (Building and Factories) M/E Ward, passed an order directing the plaintiff to remove the unauthorized construction immediately, failing which the same would be removed by the Corporation.

3) Being dissatisfied with the issuance of notice under Section 55 of the MRTP Act and the order passed thereon by the Officer of the Corporation, the plaintiff filed L.C.Suit No. 1257 of 2014 before the City Civil Court at Bombay. In the said suit, evidence was led by the parties. The plaintiff examined himself and the defendant Corporation examined their officer. After hearing both the parties, the trial court/Bombay City Civil Court passed its judgment and order dated 1 October, 2022 dismissed the suit of the plaintiff.

4) Being dissatisfied with the said judgment and order passed by the City Civil Court, Bombay, the plaintiff has filed the present proceeding before this Court.

4A) **Points for determination**

- (i) Whether the judgment and order dated 1 October, 2022 passed in L.C.Suit No. 1257 of 2014, requires

interference ?

(ii) Whether notice dated 26 June, 2013 issued under Section 55 of the M.R.T.P Act and order dated 31 July, 2014 passed by the designated officer of the Municipal Corporation are null and void ?

5) I have heard learned advocates for both the sides and I have gone through the documents on record.

6) The issue raised by the plaintiff is that the structure of he plaintiff was a permanent structure. Therefore notice under section 55 of the MRTP could not have been issued. Section 55 of the MRTP Act reads as under :-

55. Removal or discontinuance of unauthorised temporary development summarily.—

(1) Notwithstanding anything hereinbefore contained in this Chapter, where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, [or authorise any of its officers or servants,] to have such work summarily removed or such use summarily discontinued without any notice as directed in the order; and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.

7) Admittedly, the land on which the plaintiff has constructed the structure, is the land of the defendant – Municipal Corporation. The plaintiff admittedly did not have any kind of permission to erect the structure on it. The plaintiff according to his own case, has erected the structure in which he is carrying out the business of garage and in the backside of the structure, the plaintiff is using the same as his residence. In paragraph no.1 of the plaint, the plaintiff described the structure at Shop No. 19 admeasuring 10' x 45, made of partly B.M.Wall and Patra sheet wall and A.C. sheet roof. Therefore according to the plaintiff, the structure is partly of brick-wall and partly of patra sheet wall and admeasuring around 10' x 45.

8) At page 62, the documents referred to by the plaintiff is dated 31 March, 1994 which is issued by the office of the Additional Tahsildar. The document mentions the area admeasuring 256.10 sq.mtrs. Though the plaintiff has referred to this document, however it is not the same area as is mentioned by the plaintiff in the plaint. Similarly at pages 70 and 71, the plaintiff has referred to electricity bills (Reliance Energy). The said electricity bills are of the year 2013. Both the electricity bills does not mention in the address column Shop

No.19. The name of the plaintiff has been mentioned in these two bills. At page 78, the plaintiff has referred to the identity card issued by the Election Commission of India. This identity card also does not mention in the address column Shop No.19.

9) In the examination in chief, in paragraph no.1, the plaintiff has stated that the structure is partly made of brick-wall and of patra sheet wall. Similarly, the officer of the corporation in his examination in chief has mentioned the structure to be partly of brick-wall and of patra-sheet. In cross examination the same things were repeated by the officer of the corporation.

10) The plaintiff in his cross examination has categorically admitted that he did not file any document of permission and sanction plan in respect of the suit premises. He further admitted that the Corporation did not allow his plan for construction of the suit premises.

11) Considering the documents on record and the evidence where the plaintiff was not able to produce any document to show that the suit structure is permanent structure, admittedly, the structure is partly of brick and partly of patra (tin sheets). The Trial Court has dismissed the suit, with a well reasoned judgment and order. Therefore, I do not find any perversity in the action taken by the

Corporation under Section 55 of the MRTP Act and neither find any perversity in the impugned judgment and order passed by the City Civil Court. Hence, points for determination (i) and (ii) are answered in negative and the **First Appeal stands dismissed.**

12) In sequel, **interim applications, also stand disposed of as rejected.**

13) At this stage, Mr.Yadav, learned advocate appearing for the appellant seeks extension of *ad-interim* relief granted by this Court. The advocate of the Corporation has opposed this request stating that the structure is unauthorized and illegal structure, built up on the Corporation's land which according to the plaintiff as per notice is 225 sq.ft. and according to the plaintiff it is 450 sq.ft.

14) Hence, request made by Mr.Yadav stands rejected.

(RAJESH S. PATIL, J.)