

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 172 OF 2026

WITH

INTERIM APPLICATION NO. 932 OF 2026

Panna Nitin Patel

Appellant

.. (Org. Plaintiff)

Versus

Municipal Corporation of Greater Mumbai &
Anr.

Respondents

.. (Org. Defendants)

.....

- Mr. Anand A. Pandey, Advocate for Appellant - Org. Plaintiff
- Mr. Sachin Vajale, Advocate for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 5, 2026

P. C.:

1. Heard Mr. Pandey, learned Advocate for Appellant - Org. Plaintiff and Mr. Vajale, learned Advocate for Respondents - Corporation.

2. Perused the impugned order dated 22.01.2026 passed in Notice of Motion No. 3942 of 2025 in L.C. Suit No. 2601 of 2025.

3. *Lis* in the present case is in respect of issuance of notice dated 27.08.2022 under Section 53(1) r/w 52(1)(b)(d) of the Maharashtra Regional Town Planning Act, 1996 (for short "**MRTP Act**"), *inter alia*, in respect of the suit premises being Flat No. B/34 on the 4th Floor of the building called Mohammadi Apartment Co-operative Housing Society situated in Malad (E). Admittedly the record which is placed

before Court *prima facie* shows that the building was constructed in the year 1988 as a ground plus three storied structure. In 1991, further amended plans were submitted pursuant to inspection taken by the officer of the Corporation for grant of occupation certificate (for short "**OC**"). Part OC of the building has already been granted. Developer and Architect constructed the said building and has in fact applied to the Corporation with amended plans for regularizing the notice structure as far back as in the year 2004 followed by reminder in 2006 details of which are placed on record. Said Application was made by the licensed Architect and Surveyor- G.K. Karmarkar addressed to the Executive Engineer, Building Proposal Zone II, 'P' Ward of the Corporation along with amended plans seeking approval for the fourth floor of Wing 'B' and 'C as constructed by the Developer. That Application has remained pending since then and after a hiatus of more than two decades, present action has been invoked by issuing notice dated 27.08.2022 (appended at Exh. 'D', page Nos. 144-145 of Suit plaint) perusal of which *prima facie* shows that the said notice itself calls upon the incumbent occupier / owner to apply under Section 44 of the MRTP Act for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) Department of MCGM. Appellant replied to the said notice by letter dated 03.10.2022. Record indicates that Appellant – Plaintiff has

purchased the aforesaid flat premises by registered agreement for sale dated 08.07.1993 and is in fact a member of the registered Co-operative Housing Society since then. Speaking order dated 18.11.2022 passed by the Designated Officer Ward P/North is appended at page Nos. 148-149. It primarily discusses the registered agreement for sale, assessment bills issued by Corporation and share certificate issued by Society and resultantly rejected the case of Plaintiff calling upon him to provide appropriate material satisfying that the notice structure is authorized. In fact the speaking order also calls upon the noticee i.e. Plaintiff to restore the subject structure as per the approved plan of 1991. Admittedly amended plans are placed on record by the Plaintiff.

4. Mr. Vajale would submit that Plaintiff should be directed to apply once again to the Corporation if at all it is Plaintiff's case that he has applied in the past and the Corporation has not taken any action and it was the duty of the Plaintiff to pursue the same. Be that as it may in the present case, it cannot be *prima facie* opined and stated that Plaintiff has not filed any document to show that the suit structure is authorized and constructed the suit structure i.e. a flat without permission from the Corporation in view of the aforesaid facts. In fact it is seen that flats are constructed on the entire 4th floor of the two wings but only Plaintiff is singled out.

5. Considering the above, liberty is granted to Plaintiff to approach the Corporation once again by following the due process of law by making an appropriate Application, if so required for seeking regularization of the Plaintiff's structure. The dichotomy would be whether the Plaintiff as a member of the Co-operating Housing Society would have to apply or the owner of the subject land and structure which is the Co-operative Housing Society would apply. Be that as it may, it would be at the discretion of the Plaintiff to take appropriate steps as available to the Plaintiff in law. Since Plaintiff is in possession of the suit premises since 1993 and his structure has already been assessed by the Corporation for property tax and the present cause of action has been invoked recently after a hiatus of more than 30 years, the impugned order dated 22.01.2026 stands quashed and set aside. Resultantly Plaintiff is given an opportunity to apply to the Corporation and if Plaintiff does so, Corporation shall deal with the said Application in accordance with law. Needless to state that 30 days time is given to the Plaintiff to apply to the Corporation from the date of uploading of this order. Till then Corporation is directed not to take any action against the Plaintiff pursuant to the notice dated 27.08.2022.

6. All contentions of Plaintiff are kept open.

7. In view of the above, Appeal from Order is allowed and disposed. Interim Application is also disposed.

Amberkar

[MILIND N. JADHAV, J.]

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