

MHCC040018322025



IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

NOTICE OF MOTION NO.722 OF 2025
(CNR NO.MHCC04-001832-2025)

IN

L. C. SUIT NO.460 OF 2025
(CNR NO.MHCC04-001609-2025)

Jitendra Narsingh Bahadur Singh.] ... Plaintiff

Vs.

The Bombay Municipal Corporation of Greater] ... Defendants
Mumbai and another.

Plaintiff : Ld. Advocate A. K. Shukla.
Defendants No.1 & 2/MCGM : Ld. Advocate Yadnesh Kadam.

CORAM : H.H. ADDITIONAL SESSIONS JUDGE
SMT. SHILPA S. TODKAR (C.R.NO.14)

Date : 15th April, 2025.

ORAL ORDER

This Notice of Motion taken out by the plaintiff for interim
reliefs restraining defendants MCGM, their servants, agents,

representatives and / or person or persons claiming through or under them from taking any action in pursuance of impugned four Notices dated 04/10/2024 bearing (1) Notice No.HE/DO1HE/088/351–MMC ACT/ HE91N 01-10-2024, Ref. No.193027, (1) Notice No.HE/DO1HE/088/351–MMC ACT/ HE92N 01-10-2024, Ref. No.193028, (3) Notice No.HE/DO1HE/088/351–MMC ACT/ HE93N 01-10-2024, Ref. No.193029, and (4) Notice No.HE/DO1HE/088/351–MMC ACT/ HE94N 01-10-2024, Ref. No.193030, issued U/s.351 of BMC Act as well as four speaking orders dated 21/12/2024 in respect of the suit premises and / or any part thereof i.e. one structure consisting four rooms admeasuring about 10 X 20 feet each lying being and situated on the plot of land bearing Survey No.378(PT), Survey No.362, Hissa No.4(PT) of Village- Kolekalyan, Taluka - Andheri, BSD, known as Deonarayan Singh Compound, Shivaji Maharaj Road, Vakola Bridge, Santacruz (East), Mumbai – 400 055.

2. According to the plaintiff, he has filed the present suit for declaration, permanent injunction and other reliefs against the defendants.

3. The Grate-grandfather of the plaintiff had purchased the suit property by registered Deed dated 30/05/1934. The Grate-Grandfather of the plaintiff had expired on or before year 1943 leaving behind him his two sons namely Chiranjiv Prasad Deonarayan Singh and Gaurishankar Deonarayan Singh being the only legal heirs and legal representatives of said deceased Great-Grandfather of the plaintiff.

4. Said Chiranjivprasad Deonarayan Singh had expired somewhere in the year 1946, leaving behind him the father of plaintiff Mr.Narsingh Bahadur Chiranjivprasad Singh. Said Gaurishankar Deonarayan Singh expired in the year 1995, leaving behind him two sons Ramsevak and Shivsevak, out of which Ramsevak had expired somewhere in the year 1991.

5. At present there is only two legal heirs and legal representatives of the said Great Grandfather of the plaintiff i.e. Shivsevak and Narsingh. The father of plaintiff i.e. Narsingh and Shivsevak became joint owner of the suit property and the father of plaintiff is having 50% share in the said property.

6. The plaintiff is in possession of the Index - II extract of the suit property. Though the property was owned and occupied by the Grandfather of the plaintiff, but one Ramakant Joshi had constructed one structure consisting four rooms admeasuring 10 X 20 ft. each lying being and situated on the plot of land bearing Survey NO.378, Survey No.362, Hissa No.4(PT), somewhere in the year 1964.

7. The said premises had been purchased by the plaintiff from said Ramakant Joshi somewhere in the year 1982. Since then, the plaintiff is in peaceful use occupation and possession of one structure consisting four rooms, situated on the said plot. The said premises is one and same condition and there is assess from one room to other room. The said four rooms are called suit premises. The suit premises are made up by brick walls, cement sheet roof and concrete floorings. The land on which the suit premises is situated is declared as a slum by

the Competent Authority.

8. Said Mr.Ramakant Joshi had made an application to Defendant MCGM for obtaining repair permission of the suit premises by his letter dated 01/06/1981. Accordingly, BMC had issued one letter dated 05/11/1981 to Mr.Ramakant Joshi and extended the said repair permission for a period of two months.

9. After purchasing the said premises, said Ramakant Joshi had obtained Ration Card in his name at the address of the suit premises and also inserted the name of family member of the plaintiff in the said Ration Card.

10. The suit premises is duly assessed by the BMC in the year 1998 and plaintiff is regularly paying the assessment taxes of the suit premises to the BMC. Plaintiff is also in possession of electricity bill of the suit premises prior to year 1998. After purchasing the suit premises from Mr.Ramakant Joshi, plaintiff got transferred the said electricity meter in his name. Plaintiff is in possession of water bill of the suit premises since 10/02/1998. The voting Identity Card of plaintiff is also in respect of the suit premises address.

11. The father of plaintiff had filed S.C.Suit No.1908 of 2012 against Builders and Developers. The said Builders and Developers are trying to settled the matter out of court, but, not intended to give anything as agreed upon to plaintiff. The Defendant MCGM have initially issued three notices u/s.314 of BMC Act dated 19/05/2023 to plaintiff. After receiving the said notices, plaintiff has filed his reply dated 24/05/2023 and 30/05/2023 and also submitted necessary

documents. At the instance of said Builders and Developers, defendants MCGM have sent four notices U/s.351 of MMC Act to the plaintiff. Again plaintiff has filed reply dated 08/10/2024 to the said notices. Thereafter, on 21/12/2024, defendant MCGM have passed four impugned speaking orders and directed to the plaintiff to remove the alleged unauthorized structure described in the impugned notices.

12. The said impugned notices and speaking orders are illegal and have been issued and passed without application of mind as well as at the instance of one Builders and Developers who are intended to develop the plot and land on which the suit premises is situated.

13. Plaintiff has not carried out any type of addition and alteration of any nature or not carried out any alleged unauthorized construction of any nature. The land on which the suit premises is situated is declared as a slum by the Competent Authority and the suit premises is protected as the same is in existence prior to 1964. The Designated officer of the Defendant MCGM has not considered the reply and documents of the plaintiff.

14. If the relief as prayed for is not granted to the plaintiff then, plaintiff will suffer grave, irreparable loss, harm and prejudice which can not be compensated in terms of money. On the other hand if reliefs as prayed are granted then no harm or prejudice would be caused to the defendant MCGM. The balance of the convenience also lies in the favour of the plaintiff. Hence, this Notice of Motion.

15. Defendants MCGM have filed affidavit in reply and raised strong objection. According to them, these defendants have received

many complaints against the unauthorized construction in respect of notice structure. After receipt of the complaints, the officer of defendant MCGM inspected the premises on 04/10/2024. At the time of inspection, the officer of these defendants observed unauthorized construction of ground floor structure with partly B.M.walls, M.S.Angle and A.C.Sheet roof mentioned in the sketch of the notice. At the time of inspection the officer of the Corporation has asked to occupier i.e. plaintiff to produce plan and documents showing authenticity and authorization of the said notice structure. However, the occupier i.e. plaintiff failed to produce the same.

16. Thereafter, the officer of defendant MCGM took the measurements and photographs of the unauthorized structure and prepared Inspection Report. On the basis of Inspection Report, the Designated officer of defendant MCGM issued four notices U/s.351 of MMC Act on 04/10/2024 for four unauthorized structures. The said notices are duly served upon the plaintiff on 04/10/2024. After receipt of the notices, the plaintiff has filed Reply dated 08/10/2024 alongwith documents. After considering the reply and documents of the plaintiff the Designated officer of defendant MCGM have found that plaintiff has failed to submit any document to prove that, the notice structure is an authorized and constructed as per approved plan. Thereafter, considering the reply and documents of the plaintiff, Designated officer of Defendant MCGM have passed four speaking orders dated 21/12/2024 and directed the plaintiff to remove the said unauthorized structure within seven days from receipt of the said order failing which, the said work will demolish by defendant MCGM at the risks and costs of the plaintiff.

17. Defendant MCGM have further raised objection that, after amendment to the MCGM whereby insertion of Section 515A of MMC Act, this court has no jurisdiction to try and entertain any notices issued, order passed or direction issued by the Designated officer of Defendant MCGM. Therefore, the plaintiff's suit is not maintainable, as this court has no jurisdiction to try and entertain the present suit and therefore, the present suit is liable to be dismissed with costs.

18. Plaintiff has filed Affidavit-In-Rejoinder and denied the entire contentions raised by the defendant MCGM in their reply.

19. Defendants MCGM have also filed Affidavit-In-Sur-Rejoinder and contended that, the structure in question which was the subject matter of the notice issued U/s.351 of MMC Act, has already been demolished by the defendant MCGM on 22/03/2025 in accordance with law. In view of the aforesaid demolition, the present suit as well as the prayers therein have become infructuous as no cause of action subsists. Lastly prayed for dismissal of the Notice of Motion.

20. Thereafter, plaintiff has also filed Additional Affidavit alongwith photographs contending that, the Defendants MCGM has partly demolished the suit premises on 22/03/2025. The part of the premises is still in existence. Lastly prayed to allow the Notice of Motion.

21. Heard Ld. Advocate for the Plaintiff and Ld. advocate for Defendants MCGM. Perused the Notice of Motion, reply, additional affidavit of plaintiff, Sur-Rejoinder of defendant MCGM and documents

documents filed by both parties on record.

22. Considering the rival contentions of both parties, the points arise for determination alongwith my finding with reasons thereon are as follows;

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether Plaintiff proves <i>Prima facie</i> case in his favour for grant of temporary injunction as claimed?	In the Negative
02.	Whether balance of convenience lies in favour of Plaintiff?	In the Negative
03.	Whether the Plaintiff would suffer irreparable loss/damage if interim relief is not granted?	In the Negative
04.	What order?	Notice of Motion Stands Rejected.

REASONS

AS TO POINT NOS.1 TO 4.

23. It is the case of the plaintiff that, he has purchased the suit premises from Ramakant Joshi in the year 1982. Since then, the plaintiff is in peaceful use occupation and possession of one structure consisting four rooms, situated on the said plot. The said four rooms are called suit premises. The suit premises are made up by brick walls, cement sheet roof and concrete floorings. The land on which the suit premises is situated is declared as a slum by the competent Authority. But, the plaintiff has not placed on record any document to show that, he has purchased the suit premises from Ramakant Joshi in the year

1982. Moreover, the plaintiff has also not placed on record any document to show that, the land on which the suit premises is situated is declared as a slum.

24. The plaintiff has further come with the case that, said Mr.Ramakant Joshi had made an application to Defendant MCGM for obtaining repair permission of the suit premises by his letter dated 01/06/1981. Accordingly, BMC had issued one letter dated 05/11/1981 to Mr.Ramakant Joshi and extended the said repair permission for a period of two months. The plaintiff has placed on record the copy of letter dated 05/11/1981. On perusal the said letter it appears that, the subject of the said letter is "Request for the renewal of repair permission granted to the shade situated at the address". So, *prima facie* it appears that, the said letter is in respect of the repair permission granted to Ramakant Joshi for the renewal of shed under No.WOH/E/574/AEB, dated 01/06/1981 and said permission has been extended further period of two months from the date of issuance of the said letter. Admittedly, the said letter is of dated 05/11/1981. So, it cannot be said that, in view of the said renewal permission, said Ramakant Joshi has renewed the suit premises i.e. four rooms. *Prima facie* it shows that, the said renewal permission is not in respect of the suit premises.

25. Plaintiff has placed on record the copy of Ration card, copy of Electricity Bill dated 11/06/1998, 10/12/2001, 27/01/2023 and 29/04/2023, copy of Water Bill dated 10/02/1998. But, the said documents do not prove the authorization of the notice structure.

26. Plaintiff has also placed on record the photo-pass receipt,

which shows only name of plaintiff is mentioned in it and the said receipt of is of dated 09/08/2000. In the said receipt, there is nowhere mentioned the survey number of suit premises as well as description of the suit premises i.e. four rooms admeasuring 10 X 20 ft. each. So, this alleged photo-pass *prima facie* is not of suit premises.

27. Plaintiff has further come with the case that, the suit premises is duly assessed by the BMC in the year 1998 and plaintiff is regularly paying the assessment taxes of the suit premises to the BMC. The plaintiff has placed on record the copy of Assessment bill of year 2002 - 2003. On perusal the said Assessment bill it appears that, there is no description of the suit premises mentioned in it.

28. It is the case of the plaintiff that, at the instance of Builders and Developers, defendant No.2 have sent four notices U/s.351 of MMC Act to the plaintiff. Plaintiff has filed reply dated 08/10/2024 to the said notices. Thereafter, on 21/12/2024, defendant MCGM has passed four impugned speaking orders and directed to the plaintiff to remove the alleged unauthorized structure described in the impugned notices. The said impugned notices and speaking orders are illegal and have been issued and passed without application of mind as well as at the instance of one Builder and Developer who is intended to develop the plot and land on which the suit premises is situated.

29. Per-contra, defendants MCGM have come with the case that, as defendants MCGM have received various complaints in respect of unauthorised construction carried out by the plaintiff. Accordingly, the officer of defendant MCGM inspected the suit site on 04/10/2024 and found unauthorised construction of ground floor structure with

B.M.walls, M.S.Angle and A.C.Sheet roof mentioned in the sketch of the notice. At the time of inspection the officer of the Corporation has asked to occupier i.e. plaintiff to produce plan and documents showing authenticity and authorization of the said notice structure. However, the occupier i.e. plaintiff failed to produced the same.

30. Thereafter, the officer of defendant MCGM took the measurements and photographs of the unauthorized structure and prepared Inspection Report dated 04/10/2024. On the basis of inspection report, the Designated officer of defendant MCGM issued four notices U/s.351 of MMC Act for four unauthorized structures. The said notices are duly served upon the plaintiff on 04/10/2024. Defendant MCGM have placed on record the said Inspection Report which shows that, the officer of Defendant MCGM have inspected the site on 04/10/2024 and prepared Inspection Report.

31. Defendant MCGM further come with the case that, as plaintiff has failed to show the document to prove the authorization of the notice structure, the officer of defendant MCGM issued four notices U/s.351 of MMC Act to the plaintiff on 04/10/2024. Defendant MCGM have also placed on record the four Notices dated 04/10/2024. On perusal the said notice it appears that, in the said notices it is specifically mentioned that, the owner / occupier i.e. plaintiff has carried out the unauthorised construction of ground floor structure with partly B.M.Wall, M.S.Angle and AC sheet roof admeasuring as shown in the sketch of Notice situated at Chatrapati Shivaji Maharaj Road, Infront of Dev Apartment, Vakola, Santacruz East, Mumbai.

32. Defendant MCGM further come with the case that, after receipt of the notices, the plaintiff has filed reply dated 08/10/2024 alongwith documents. After considering the reply and documents of the plaintiff the Designated officer of defendant MCGM have found that plaintiff has failed to submit any document to prove that, the notice structure is an unauthorized and constructed as per approved plan. Thereafter, considering the reply and documents of the plaintiff, Designated officer of Defendant MCGM have passed four speaking order dated 21/12/2024. The defendant MCGM have placed on record four speaking order dated 21/12/2024 . In the said speaking order it is specifically mentioned that, the reply and documents filed by the plaintiff cannot be considered to treat structure as authorized. It is further mentioned that, plaintiff has failed to produced any relevant documents to prove the authorization of the notice structure as mentioned in the notice. Hence, the construction work is treated as unauthorised and liable for demolish. It is further directed to the plaintiff to remove the said unauthorized structure within seven days from receipt of the said order failing which the said Notice work will demolish by defendant MCGM at the risks and costs of the plaintiff.

33. The defendant MCGM have placed on record the copy of complaint dated 26/03/2024. On perusal the said complaint it appears that, the defendants MCGM have received complaint from Shreeji Realities Pvt. Ltd., in respect of unauthorised encroachment on Plot bearing CTS No.3954, 3955 and 3956 at Village Kolekalyan, Vakola, Bulsroyee Road, Santacruz (E), Mumbai.

34. Ld. advocate for the Defendant MCGM has submitted that,

after amendment to the Municipal Corporation Act whereby insertion of section 515A of MMC Act, this court has no jurisdiction to try and entertain any notice issued U/s.351 or 354A of the MMC Act. So, the suit of plaintiff is not maintainable as this court has not jurisdiction to try and entertain the present suit in view of section 515A of MMC Act and prayed for rejection of ad-interim reliefs.

35. He has relied upon the decision of *Hon'ble Bombay High Court in the matter of Abdul Razzaq Sunesra V/s. MCGM and others, in W.P.(L) No.1709 of 2013*. Wherein it is observed that, "The bar of jurisdiction which has been enacted by Section 515A of MMC Act, 1888 as amended is arbitrary or unconstitutional. The provisions of Sections 351 and 354A contain adequate safeguards, both procedural and substantive, to ensure due notice, an opportunity to represent, the consideration of the cause shown and an application of mind to relevant and germane circumstances. A reasoned order must be passed. The legislature was in our view acting in the public interest in ensuring that, the urgent need of taking expeditious action against unauthorised constructions does not get lost in a maze of dilatory remedies in Civil Courts.

36. The ad-interim relief was refused by the City Civil Court primarily in view of Section 515A of MMC Act, but also on the ground that, corrective machinery is available in the form of a representation before the Grievance Redressal Committee. The circular that has been issued by the Commissioner of the Mumbai Municipal Corporation on 4th June 2013 for the setting up of a Grievance Redressal Committee was as a result of the directions issued by this court to the effect that, there should be an appropriate mechanism for redressal of grievances

pertaining to unauthorised constructions. The aim of the circular is to redress grievance received from a complainant in respect of action / non-action on unauthorised constructions. The circular provides in Clause - 2.3 that, the Zonal Committee shall not pass any order which will stop stay the notice action initiated by the Designated Officer and the on going notice action will continue and be brought to its logical conclusion. Similarly, clause - 6.5 requires the owner / occupier against whom a complaint is made to be called to attend the hearing. The circular, therefore, provides a remedy to citizens to complain against unauthorised structures. Be that as it may, the City Civil Court was on its interpretation of Section 515A of MMC Act justified in coming to the conclusion as it did on the bar of jurisdiction. For the aforesaid reasons, we do not find any merit in the challenge to the constitutional validity of section 515A of MMC Act, 1881. The Petition shall accordingly stand dismissed. However, in view of the fact that, the Petitioner should, in the interest of justice, be allowed to take recourse to the remedy of a petition under Article 226 of the Constitution for challenging the order passed under section 351 of MMC Act."

37. In the present case, the plaintiff has challenged the impugned four notices dated 04/10/2024 issued U/s.351 of MMC Act and four speaking orders dated 21/12/2024. So, in view of section 515A of MMC Act, any notices issued, order passed or direction issued by the Designated officer U/s.351 or 354A of MMC Act shall not be question in any suit or other legal proceedings.

38. So, the present suit is filed by the plaintiff though there was a statutory bar under Section 515-A of MMC Act. The Constitutional validity of the amendment to Section 515-A has been upheld by the

Hon'ble High Court in the case of ***Abdul Razzaq Sunesra V/s Municipal Corporation of Greater Mumbai and Others***, reported in 2013 SCC Online BOM 832. Despite of it, the plaintiff has filed the present suit, which *prima facie* appears statutory bar.

39. So, *prima facie* without going into the merits of the case it appears that, after receiving complaints the officer of defendant MCGM has inspected the site on 04/10/2024 and found unauthorised construction mentioned in the notices. Thereafter, on the basis of Inspection Report, the officer of defendant MCGM have issued four notices dated 04/10/2024 U/s.351 of MMC Act. Record also shows that, the said notices are duly served upon the plaintiff. After receipt of the notices, the plaintiff has filed reply dated 08/10/2024 alongwith the documents to the said notices. After considering the reply and documents of plaintiff, the Designated officer has passed four speaking order dated 21/12/2024, which are legal and proper.

40. Moreover, the defendant MCGM have filed Affidavit of Sur-Rejoinder wherein it is mentioned that, the defendant MCGM have demolished the notice structure. The defendant MCGM have also placed on record the Demolition Order dated 22/03/2025 alongwith photographs. In the said Demolition Order dated 22/03/2025 it is specifically mentioned that, the demolition action was carried out on 22/03/2025 as per the notices and speaking orders issued by the office of Defendant MCGM. It is further mentioned that, the action was taken in accordance with the relevant provisions of the MMC Act. The defendant MCGM have also placed on record the photographs of demolition. So, the Demolition Order dated 22/03/2025 as well as the photographs of demolition of the notice structure, clearly show that,

the notice structure is demolished by the defendant MCGM by following due process of law.

41. Per-contra, plaintiff has placed on record the additional affidavit contending that, the notice structure is partially demolished and partly notice structure is still in existence. Whether, the part of notice structure is in existence or not, it requires evidence.

42. So, considering the documentary evidence of both the parties filed on record, without going into the merit of the case *prima facie* it appears that, plaintiff has not produced single document to prove the authorization of the four notice structures. So, *prima facie* it appears that, the notice structure of plaintiff is unauthorised. So, the impugned four notices dated 04/10/2024 and four speaking orders dated 21/12/2024 are *prima facie* appears legal and proper.

43. Plaintiff has failed to prove *prima facie* case for grant of interim reliefs. In such situation balance of convenience also do not lies in favour of the plaintiff and plaintiff will not suffer irreparable loss if, interim relief is not granted in his favour. Per-contra, defendant MCGM suffer irreparable loss if they have not taken an action pursuant to the four notice dated 04/10/2024 and four speaking orders dated 21/12/2024. Moreover, the demolition order dated 22/03/2025 clearly shows that, the four notice structures are fully demolished. Hence, I answer point No.1 to 3 in the Negative and point No.4 is as above.

In a result, I proceeded to pass following order: -

ORDER

1. Notice of Motion No.722 of 2025 is hereby rejected.
2. Notice of Motion No.722 of 2025 stands disposed off accordingly.

Date: 15.04.2025

(Shilpa S.Todkar)
Judge, City Civil Court &
Additional Sessions Judge,
Borivali Division, Dindoshi
Goregaon, Mumbai.

Direct Dictated on computer on	:	15.04.2025
Corrected and Signed on	:	16.04.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

Date : 16.04.2025

Time : 02.00 P.M.

UPLOAD DATE AND TIME

Mrs.Madhura M. Palav

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room
no.)

HHJ Smt. Shilpa S. Todkar
(C.R.No.14)

Date of Pronouncement of
JUDGMENT/ORDER

15.04.2025

JUDGMENT/ORDER signed by P.O. on

16.04.2025

JUDGMENT/ORDER uploaded on

16.04.2025