

**IN THE BOMBAY CITY CIVIL COURT AT DINDOSHI
BORIVALI DIVISION, GOREGAON, MUMBAI**

DRAFT NOTICE OF MOTION

IN

**S.C. SUIT NO.3377 OF 2023
CNR No.MHCC04-011206-2023**

Mohammad Naz Rahmani .. Plaintiff

V/s

Mumbai Metropolitan Region
Development Authority ..Defendant

Appearance:-

Ld. Adv.Walwaikar for plaintiff.

Ld. Adv.Vinod Shah for defendant/MMRDA.

**CORAM:- Her Honour Judge
Smt. Neeta S. Anekar
(C.R.No.6)**

DATE : 14th December 2023

ORDER

Perused Notice of Motion and documents. Heard Ld. Advocate for both parties. As per the plaintiff the notice under challenge is vague and the structure described in paragraph no.12 of the plaint, that is the enclosed balcony alongwith the outer pergola had been constructed by the developer categorically to avoid rainwater from accumulating in the said area and hence the said structure had been constructed with iron angle, bricks, cement and tiles which is adjacent to all the flat since 2014 i.e. from the date of occupancy and possession of flat. It is further claimed that the said structure has not been separately constructed by the individual flat owners but it exists as a

permanent structure constructed by the developer since the inception. It is further submitted that the notice at Exh-A to the plaint is vague and without any foundation. Therefore, he has claimed that implementation of the said notice may be stayed.

2. Per contra, Ld. Advocate for the defendant claimed that notice structure is not finding place in the plan. The unauthorized structure has been made on outer pergola of the floor bed by means with iron angle, bricks, cement and tiles. He has further claimed that MMRDA is planning authority who has granted Commencement Certificate and Occupation Certificate dtd.21.2.2014. The said structure has been thereafter constructed unauthorizedly and therefore same is not finding place in the plan which the Ld. Advocate for the plaintiff has placed before the court for its perusal. He has also placed reliance on the ratio laid down in Abdul Rashid Khan V/s BMC, Mumbai in Appeal (L) No.475 of 2008 in Writ Petition No.1422 of 2008 decided on 24.10.2008.

3. It is to be seen that as per the plaintiff the said structure existed since inception and it is not something constructed by the individual flat holder. The plan produced by the plaintiff for the perusal of the court does reflect that floor bed is the structure outside the individual flats. As per the plaintiff the said structure is there since inception constructed by the developer to avoid water accumulating. Thus it can be seen that there is a structure as mentioned in the notice.

4. Now it is the case of the plaintiff that he has replied the notice under challenge. In the reply also in paragraph no.4 and 6 the plaintiff has submitted that the said structure has been constructed by

the developer. The facts remains that the structure is in existence. If the notice under challenge is seen it is issued to the plaintiff u/s 55 of the Act. The plaintiff is claiming that since he has replied the notice the defendant needs to go through the papers and thereafter to take suitable action. He has also relied on the ratio laid down in *Sugra Kasam Inamdar V/s Municipal Corporation of Gr.Mumbai* 2017 SCC OnLine Bom 5041. By virtue of the said ratio he has stated that personal hearing may be given to him. However, fact remains that in the said case the respondent i.e. Municipal Corporation has submitted that it is ready to offer personal hearing the petitioner therein. On such submission the personal hearing was awarded by the plaintiff. Such are not the fact of the present case.

5. The notice has been issued to the plaintiff u/s.55 of The Maharashtra Regional & Town Planning Act, 1966. On perusal of the notice it is seen that the plaintiff has been given the period of 15 days to place on record the documents, in case the construction is sanctioned and authorized. The notice further states that, in case the construction is not sanctioned and authorized, plaintiff is called upon to pull down the same. Thus, the notice goes to show that the plaintiff has to file requisite documents before the concern Authority. Furthermore, as per Section 55(2) of the said Act the decision of the Planning Authority on the question of what is development of a temporary nature shall be final.

6. Prima facie present case is covered by Division Bench Judgment relied on by the defendant supra as the structure is a temporary structure as per notice. So far as ratio relied on by the plaintiff is concerned in that case there is statement made by the

concerned authority that they will offer personal hearing to the petitioner therein. Such is not the present case. And therefore with due respects the plaintiff cannot take advantage of that ratio. If at all the plaintiff has any documents to show the suit structure to be authorized, he could have produced them before the defendant. Thereafter it is for that Authority to consider the same and the decision of the authority is final. And therefore I am not inclined to interfere into the action taken by the defendant.

7. Therefore on considering the case of the plaintiff that structure was in existence since inception is contrary to the plan which is placed on for the perusal of the court. And therefore, the defendant being the Planning Authority has taken the action pursuant to section 55 of the Act. Therefore, I am not inclined to consider the request of the plaintiff. Hence, the order.

ORDER

1. Ad interim relief is hereby refused.
2. Defendant to file reply to the Notice of Motion for its consideration on merits.

14.12.2023
Mumbai

(Smt. Neeta S. Anekar)
Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi, Mumbai

Dictated on : 14.12.2023
Transcribed on : 14.12.2023
Checked & Signed on : 15.12.2023

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

Date : 15.12.2023

Time : 12.30pm

UPLOAD DATE AND TIME

Mrs. P. P. Khanvilkar

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room
no.)

HHJ Smt.Neeta S. Anekar
Court Room No.6

Date of Pronouncement of
JUDGMENT/ORDER

14.12.2023

JUDGMENT/ORDER signed by P.O. on

15.12.2023

JUDGMENT/ORDER uploaded on

15.12.2023