

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 351 OF 2026
WITH
INTERIM APPLICATION NO. 2798 OF 2026

Ashok Mahadev Kule

Appellant

.. (Org. Plaintiff)

Versus

Municipal Corporation of Greater Mumbai

Respondent

.. (Org. Defendant)

.....

- Mr. Janay Jain a/w Mr. Shailesh Pal i/by Mr. Vijay Shukla,
Advocates for Appellant
- Mr. Sachin Vajale, Advocate for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 7, 2026

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 07.05.2026.
2. Heard Mr. Jain, learned Advocate for Appellant i.e. Org. Plaintiff and Mr. Vajale, learned Advocate for Respondent i.e. Org. Defendant. For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court.
3. Present Appeal from Order (AO) is filed to assail the order dated 10.03.2026 passed by learned Trial Court dismissing Notice of Motion No. 629 of 2026 in B.C.C.C. L.C. Suit No. 321 of 2026.

4. At the outset, Mr. Jain candidly informs the Court that suit premises has been demolished on 06.02.2026 by the Corporation in furtherance of the impugned statutory notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "**the Act**") dated 23.01.2026 and ex parte speaking order passed by the Designated Officer of Corporation dated 31.01.2026. Copies of the aforesaid statutory notice dated 23.01.2026, speaking order dated 31.01.2026 and impugned order dated 10.03.2026 are appended to the AO. He would submit that the alarming alacrity with which Corporation has acted in the present case deserves to be noticed by this Court for the purpose of passing of appropriate directions. He would submit that the statutory notice under Section 351 of the Act was issued on 23.01.2026, *inter alia*, alleging unauthorized construction of the suit premises comprising of 15 rooms situated at CTS NO. 1, Survey No. 39, Village Valnai, Near Mitchchowki Metro Station, Malad (W), Mumbai. He would next submit that on 27.01.2026, a detailed reply to the impugned statutory notice was filed by Plaintiff. He would submit that without even waiting for prescribed period and following the due process of law on 31.01.2026 i.e. within four days of filing the reply without the knowledge of Plaintiff and without putting the Plaintiff to notice the Designated Officer passed the speaking order holding that the entire notice

structure was unauthorized on the premise that no plan sanctioned by the competent authority i.e. Corporation was produced and therefore the notice structure could not be treated as a tolerated structure. By virtue of the said speaking order, Plaintiff was directed to remove the unauthorized structure immediately but within six days thereafter, Corporation arrived at the site of the notice structure and forcibly demolished the entire notice structure.

5. On the issue of merits, Mr. Jain would draw my attention to the fact that similar action was invoked by Corporation by issuing identical statutory notice under Section 351 of the Act on 17.07.1984 against the father of the Plaintiff for the same cause of action in respect of the same suit structure. He would draw my attention to the copy of the said notice appended at page No. 75 of AO. On perusal of the same, it appears that *prima facie* what Mr. Jain has submitted is correct. Next he would submit that the suit premises are admittedly a censused structure standing on the said land for the post more than five decades. He would submit that documentary evidence in that regard, *inter alia*, of the subsistence and existence of the notice structure has been placed on record in the form of reply filed to the statutory notice. He would vehemently argue that without considering the material documentary evidence, speaking order dated 31.01.2026 was

passed and executed immediately thereafter to the prejudice of Plaintiff.

6. He would submit that subsistence and existence of the suit premises is clearly documented and proved by various documents which are appended to the present AO from page No. 69 onwards. It is *prima facie* seen on perusal of the said documents that the suit premises having a construction of more than 5000 sq.ft. is censused structure as per Census Certificate No. PXC-4 1/1. It is also seen that the office of the Additional District Deputy Collector, Mumbai Suburban District has passed order dated 30.06.2011 with regard to payment of non-agricultural assessment for the suit premises thereby assessing the suit premises and concluded that it was used for residential and commercial purposes and father of the Plaintiff was called upon to pay the N.A. assessment with regard thereto to the Collector. Thus, on the aspect of merits, Mr. Jain would submit that despite substantial documentary evidence having been placed on record, the Designated Officer in extremely high handed, arbitrary and capricious manner passed the speaking order which four days after issuance of statutory notice admittedly driven by extraneous consideration which led to demolition of the suit structure on 06.02.2026.

7. In view of the above, Mr. Jain would submit that the Suit was filed not only challenging the statutory notice and the speaking order but also the impugned action of Corporation of demolishing the suit premises, for restoration of suit premises and to seek *status quo ante* which existed as on 05.02.2026 i.e. prior to demolition of the suit premises. He would draw my attention to the prayer clauses in the Suit appended at page No. 56 of the AO.

8. He would submit that learned Trial Court considered the submissions of Plaintiff while determining the Motion and passed the impugned order by giving reasons in paragraph Nos. 6 and 7 thereof. He would submit that Trial Court rejected interim reliefs to the Plaintiff but given liberty to the Plaintiff to apply to the Corporation for reconstruction of suit rooms and if such Application is made, it has directed the Corporation to consider it within 60 days in accordance with law. That interim order rejecting the Motion and giving the above liberty was passed on 10.03.2026.

9. Grievance made by Mr. Jain is that such high handed action of the Corporation is completely arbitrary when the Corporation has not followed its own Circular whereby after filing of the reply, Designated Officer is required to give a hearing to the concerned occupant and only thereafter pass speaking order. He would argue that while denying the principles of natural justice, Corporation has also not

considered the request made by Plaintiff for not being present in view of the bereavement which has occurred in the Plaintiff's family and for which Plaintiff has required to go to his native place. He would submit that the documentary evidence which is placed on record *prima facie* shows substantial material to prove subsistence and existence of the suit structure. He would submit that the alleged inspection report relied by the Corporation talks about construction of 12 rooms whereas impugned notice issued under Section 351 of the Act alleges construction of 15 rooms but in reality the Corporation has in fact demolished 23 rooms belonging to the Plaintiff.

10. Mr. Jain would persuade the Court to consider the aforesaid facts and argue that if the Corporation behaves in such a manner and more so specifically when at the behest of some party or for extraneous consideration and does not follow the due process of law, the Court of Law should step in. He would therefore submit that even though learned Trial Court has directed the Plaintiff to make an Application to the Corporation and further direction is given for consideration of the said Application within 60 days, looking at the action of Corporation it appears that Corporation will not be in a position to consider the request for restoration. Hence, being aggrieved present AO is filed for seeking direction from Court to that extent. He would submit that Plaintiff has made out good case on

merits of the matter a also on the basis of substantial documentary evidence which proves the legality of the suit premises and subsistence and existence of the same since long. He therefore prays for passing appropriate directions to the Corporation.

11. Considering the submissions made by Mr. Jain at this mentioning state in the aforesaid facts and circumstances, Corporation needs to file appropriate affidavit in reply to explain its high handed action. The timeline which is delineated hereinabove has *prima facie* proved that the Corporation has acted in extremely high handed manner in the present case. Corporation's own Circular dated 24.04.2025, copy of which is placed at page Nos. 104-108 has not been followed by the Corporation's Officer. Said Circular lists out guidelines against unauthorized constructions and it categorically states that no demolition should be carried out without prior show cause notice made returnable either in accordance with the time provided by the local municipal laws or within 15 days time from the date of service of such notice, whichever is later. The Officer of the Corporation who has carried out the demolition or the Officer ordering it, is personally responsible for such an action. His name will be disclosed by the BMC who is directed to file Affidavit by this order.

12. In the present case in view of the aforesaid timeline, it is seen that the guidelines issued by Corporation have been flouted by the

Designated Officer and even the Officer ordering demolition. Once this is the position, it becomes incumbent upon the Corporation which is a Planning Authority to give appropriate explanation to the Court. In such strong facts and circumstances, if the Corporation is unable to give appropriate written explanation to the Court, the Court will have no option than to direct restoration and reconstruction of the suit premises of the Plaintiff. The reason which impels me to pass this order is because of overwhelming *prima facie* documentary evidence, details of which were also placed in the pleadings at page Nos. 98 to 100 *prima facie* which make out a case for issuance of notice to the Corporation.

13. Hence, issue notice to the Respondent - Corporation made returnable on 18.06.2026. Humdast permitted. In addition to Court's notice, Appellant is directed to serve copy of the AO and Interim Application along with copy of this order on the Corporation and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

14. In normal circumstances, the aforesaid order would suffice but in the strong facts and circumstances of the present case, it is incumbent that a responsible officer of the Corporation files affidavit in reply giving explanation to the Court in respect of the high handed

action of the Corporation in the present case. Names of the Officers involved in the present case shall be disclosed on Affidavit along with reasons for not following the due process and Corporation's own circular. Once again I am impelled to pass such direction because the Corporation cannot take law into its own hands, deny the principles of natural justice, deny complying with guidelines issued in its own Circular and then not be answerable to anybody. Corporation is answerable to this Court. Plaintiff has approached this Court and the facts which are delineated herein above are *prima facie* evident from the record of the case.

15. Attention is invited to a similar case in which MHADA had invoked and taken a similar course of action in the case of ***Jagjitsingh Jogindersingh Reen V/s. Maharashtra Housing and Area Development Authority¹***. It is commonly observed that where large structures are held and occupied by parties in Mumbai for a considerable length of time, and despite the parties showing overwhelming evidence to prove subsistence and existence of their suit structure since decades, and Planning Authorities having acknowledged the same, at the behest of the Developer who would be required to provide Permanent Alternate Accommodation for the same larger structure, the Corporation is issuing statutory notices and calling for providing the sanctioned plan

¹ Appeal from Order (St) No.9167 of 2026

and permission for construction as on or before the datum line. *Prima facie* the invocation of such impugned action by Corporation in such circumstances is not *bona fide*. In some cases it is seen that Corporation acts with alarming haste and without following the due process of law which is contemplated by Corporation's own guidelines and circulars without giving any opportunity of personal hearing to parties only at the behest of some interested Developer, they take the law into their own hands and demolish the subject suit structure in order to extinguish evidence. Such is the present case before me, therefore the Court will have to step into such matters and in a given case after hearing parties, if it is found that Corporation has derelicted and not followed the due process, it would be incumbent upon Court to direct Corporation to reconstruct the original structure as it was at the interim stage and also penalise the Corporation's Officers. The only message required to be conveyed to the Corporation, which is a special planning authority, is that it should not take law into its hands and follow the due process of law for effecting demolition if it has issued statutory notice in accordance with law.

16. Hence I direct the Dy. Municipal Commissioner of the Corporation to file an appropriate affidavit in reply in the present matter, setting out and explaining the circumstances and reasons which constrained and/or prompted the officers of the Corporation to

disregard the prescribed timeline and to proceed, without affording any opportunity of personal hearing to the Plaintiff with the demolition of the entire suit premises in undue haste, within a span of merely 13 days from the date of issuance of the statutory notice. Such action of alarming alacrity and efficiency shown by the Corporation is shocking in the present case. Corporation is also expected to place on record cogent, satisfactory, and sustainable reasons so as to satisfy the conscience of this Court, failing which the Corporation shall render itself liable to be directed to reconstruct and restore the suit premises of the Plaintiff, which appears to have been demolished in a high-handed and arbitrary manner by the Corporation.

17. Let the copy of this order be placed before the Municipal Commissioner who will take cognizance of this order and ensure that the directions contained herein above are followed and appropriate reply is filed explaining the acts of Corporation's officers in the present case.

18. Let the affidavit-in-reply be filed within a period of four weeks from today with an advance copy to the Advocate for Appellant. Rejoinder if any shall be filed within two weeks thereafter.

19. Stand over to **18th June, 2026**.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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