

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER (ST.) NO.12800 OF 2005  
WITH  
CIVIL APPLICATION (ST.) NO.12801 OF 2005

Harishchandra N. Agrawal                      ... Appellant

versus

The Municipal Corporation of

Greater Mumbai and others                      ... Respondents

...

Mr. R.P. Ojha with Mr. Sunil Singh, for the  
Appellant.

...

CORAM : A.M.KHANWILKAR,J.

(VACATION JUDGE)

30th May 2005

P.C.:

.            Heard Counsel for the Appellant. This  
Appeal from Order takes exception to the order  
passed by the City Civil Court dated 26th May

2005 below Draft Notice of Motion No.\_\_\_\_of 2005 in L.C.Suit No.2489 of 2005. The action against the Appellant's structure has been initiated by the Corporation in exercise of powers under section 314 read with section 394 of the Mumbai Municipal Corporation Act, 1888, on the assertion that the stall in question is on footpath near Railway Station Gate. After due enquiry, order came to be passed by the Assistant Commissioner, "G" North Ward on 25th April 2005. The authority has opined that the Appellant was in occupation of shop, which is not in V.L.T. plot known as Irani Chawl. It has clearly opined that Unit No.2 of the shop possessed by the Appellant is on footpath and the same is confirmed by the Administrative Officer (Estates), "G" North Ward and Assistant Commissioner (Estates). It is on that basis the proposed action under section 314 of the Act in respect of lassi shop now named as "Nyahari" is being pursued against the structure in question by the Corporation.

. To get over this position, Counsel for the Appellant contends that the Corporation has issued licence to conduct Bhel Puri business in

the said structure since prior to 1962. This argument, however, clearly overlooks the finding reached by the authority on the basis of record that the structure in respect of which action is proposed under section 314 of the Act is a lassi shop now named as "Nyahari", which is on Municipal footpath near Railway Station Gate. The fact that licence was issued in respect of the said shop or that the said stall was assessed for the purpose of taxes by the Corporation will make no difference if the same comes within the road alignment or footpath as is the case of the Corporation, which is established from the record. Counsel for the Appellant is not in a position to produce even a single document to establish the position that the offending structure in respect of which action under section 314 of the Act is initiated by the Corporation does not come within the road alignment or footpath. In the circumstances, I see no reason to depart from the view taken by the Court below in rejecting the prayer for ad interim relief.

. Counsel for the Appellant contends that

the Appellant would be entitled for alternate premises in the event of demolition of the offending stall in terms of the scheme applicable in that behalf to rehabilitate such persons. It is not necessary for me to go into that question. If the Appellant is entitled to benefit under any such scheme, that aspect will be considered by the authorities in accordance with law.

. Hence, this Appeal from Order fails. The same is dismissed. As the Appeal from Order is dismissed, the accompanying Civil Application is also disposed of.

. At this stage, Counsel for the Appellant submits on instructions that the Appellant may like to take up the matter before the Apex Court for which reason some protection be granted to the Appellant. As the structure is on public footpath and is obstructing the road alignment or footpath, no indulgence is warranted in respect of such structure. Hence, that prayer is rejected.

( A . M . KHANWILKAR , J . )