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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION

FIRST APPEAL NO.802 OF 2011

Swaroop Singh Manaktala ...Appellant
vs.
The Municipal Corporation of
Greater Mumbai ...Respondent

ALONG WITH
FIRST APPEAL NO.803 OF 2011

Baldeo Singh Ram Singh ...Appellant
vs.
The Municipal Corporation of
Greater Mumbai ...Respondent

ALONG WITH
FIRST APPEAL NO.804 OF 2011

Tawarak Ali Sikandar Ali ...Appellant
vs.
The Municipal Corporation of
Greater Mumbai ...Respondent

ALONG WITH
FIRST APPEAL NO.805 OF 2011

Yashwant Anton Koli ...Appellant
vs.
The Municipal Corporation of
Greater Mumbai ...Respondent

Mr.B.P.Shukla for the appellant
Mr.Vinod Mahadik for the respondent

CORAM : A.S.OKA,J.
DATE : JULY 29, 2011

P.C.:

1 Heard the learned counsel for the appellant and
the learned counsel for the respondent. These

appeals can be disposed of by a common Judgment and Order.

2 The challenge in the suits filed by the appellants was to the notices issued under section 351 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the said Act) and order passed thereon after considering the reply of the appellants. The Trial Court by the impugned decree has dismissed the suits by holding that the appellants failed to prove that the suit structures are authorized or that they can be tolerated as per the policy of the Corporation.

3 The submission of the learned counsel for the appellants is that notice itself records that the demolition of the suit structures was required to be carried out for the purpose of construction of road which is specifically named in the notices. His submission is that the only provision which could have been invoked for construction of road is section 299 of the said Act and in such a event, the appellants would be entitled to compensation. His submission is that in two out of the four cases, the record produced by the respondent-Corporation shows that the suit structures were assessed in the year 1983 or 1987.

4 I have carefully considered the submissions. The allegation in the notice under section 351 of the said Act is that the appellants have carried out unauthorized construction. Perusal of the complaints shows that the appellants have not relied upon any

authorization to construct the structures. The first contention in the suit is that section 299 of the said Act is applicable. The second contention is that the suit structures were in existence on 1st January 1995. From the perusal of the Judgments it appears that a contention was raised that the suit structures were in existence from the year 1961-1962. No document has been admittedly produced to show the existence of the suit structures from the year 1961-1962. As regards argument that the suit structures were in existence on 1st January 1995, the suit structures are admittedly not in a slum area and, therefore, the same cannot be protected only on the ground that the same were in existence as on 1st January 1995. Thus, the Trial Court has held that the suit structures are not proved to be authorized structures. Moreover, the appellants have failed to prove that the structures can be tolerated as per the policy of the respondent-Corporation.

5 There is no merit in the appeals and the same are dismissed with no order as to costs.

6 If appellants are entitled to alternative accommodation in terms of the policy of the respondent-Corporation, the appellants can always apply to the respondent-Corporation. If such application is made, the same shall be considered on its own merits by the respondent-Corporation.

7 Civil application nos.441, 433, 436 and 439 of 2011 do not survive and the same are disposed of.

8 Ad-interim relief granted earlier will continue
to operate for a period of three months from today.

JUDGE