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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.653 OF 2011
WITH
CIVIL APPLICATION NO.2893 OF 2011

Sailappan Sodali Muthu
Age: 54 Occupation: Business
Adult, Mumbai Inhabitant, residing at
Plot No.201, Gauri Nagar, Gorai Khadi,
L. T. Road, Borivali (W)
Mumbai 400 092

... Appellant
(Org. Plaintiff)

Versus

The Municipal Corporation Of
Greater Mumbai
A Corporation duly incorporated under
The Bombay Corporation Act, 1888
Having its head office at Mahapalika Bhavan,
Mahapalika Marg, Mumbai 400 001

...Respondent
(Org. Defendants)

Mr. Pradeep J. Thorat i/b Mr. P. B. Gujar for the Appellant.
Ms. Pallavi Khale i/b. Ms. Komal Punjabi for Respondent No.1.

CORAM : JITENDRA JAIN, J.
DATED : 20 JANUARY 2026

P. C.:

1. This appeal is filed challenging the order passed by the City Civil Court on 23 February 2011 whereby notice issued under Section 314 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) was held to be valid and it was held that the structure in respect of which the notice

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was issued was situated on the dumping ground belonging to the Corporation.

2. The appellant-plaintiff in the plaint had prayed that the impugned notice under Section 314 of the MMC Act dated 28 April 2008 is illegal, bad in law, null and void.

3. The scanned copy of the impugned notice is reproduced hereunder:-----

Exh. J [C(17)]
31/08/27

MUNICIPAL CORPORATION OF GREATER MUMBAI

PUBLIC NOTICE UNDER SECTION 314 OF THE MUMBAI MUNICIPAL CORPORATION ACT.

No. AERC/359/AEM
Dt. 28/04/2008

Office of the
Asstt. Commissioner R /Central,
Municipal Market Building,
Swami Vivekanand Road,
Borivali(West), Mumbai 400 092.

To,

Sri. S. S. Laxman, Sadalai Muthu,
M/H. S. S. Laxman, Sadalai Muthu, Auto Garage,
opp. Hotel Nylam, Prade, Lokmanya Tilak Road,
Borivali (West), Mumbai-400092.

Notice is hereby given to all the persons who are in occupation of the shanties/ huts/ stalls/ structures which are constructed on the Municipal Dumping ground situated at Borivali Dumping ground plot, opp. Hotel Nylam, Prade, L.T. Road, Borivali, Mumbai-400092. in violation of the provisions of the Mumbai Municipal Corporation Act.

The occupiers of the shanties/ huts/ stalls/ structures are hereby directed to remove the said shanties/ huts/ stalls/ sheds etc. together with their belongings within 7 days from the display of this notice on the site, failing which the shanties/ huts/ stalls/ shed etc. and all the things deposited thereon will be removed as per the provisions of the Section 314 of the M. M. C. Act any time thereafter without giving any further notice which please note. (Necessary location sketch is shown overleaf).

28-4-08
Assistant Commissioner
R/Central Ward.

4. Section 314 of the MMC Act empowers the Commissioner to remove without notice anything erected, deposited or hawked in contravention of Sections 312, 313 or 313A of the MMC Act .
5. Section 312 of the MMC Act deals with prohibition of structures or fixtures which cause obstruction in streets. Section 313 of the MMC Act prohibits deposit upon any street or upon any open channel, drain or well in any streets, any stall, chair, bench etc. in any public place so as to form an obstruction thereto or encroachment thereon or prohibit project at a height of less than 12 feet from the surface of the street or attached to or suspend from any wall or portion of building abutting on a street at a height less than 12 feet. Section 313A of the MMC Act provides for license for sale in public places.
6. Before issuing notice under Section 314, the Commissioner has to satisfy himself as to whether there is contravention of Sections 312, 313 or 313A of the MMC Act for exercising his powers under Section 314 of the MMC Act. The said satisfaction has to be reflected in the notice which is issued. In the instant case, the impugned notice (scanned as above) does not specify as to which of the provisions of the MMC Act viz., Sections 312, 313, 313A is contravened for empowering the Commissioner to initiate proceedings under Section 314 of the MMC Act.

7. The notice on the face of it appears to have been issued mechanically and without application of mind.
8. The respondent-Corporation did not file any written statement before the trial Court in which they could have justified the nature of contravention for which the power was exercised. Therefore, in the instant case, the respondent-Corporation has failed to satisfy jurisdictional condition for issuance of notice under Section 314 of the MMC Act.
9. Since the notice itself does not satisfy the jurisdictional condition required under Section 314 of the MMC Act, in my view the impugned notice cannot be sustained and has to be quashed and set aside.
10. Mr. Thorat, learned counsel for the appellant has raised various contentions on merits as also on the nature of proceedings under Section 314 of the MMC Act. I do not propose to give any findings on the same since on the jurisdictional aspect itself, the notice under Section 314 of the MMC Act dated 28 April 2008 cannot be sustained.
11. The appellant has also taken out an application for admission of additional evidence to produce the property card on record. However, since I have held the notice itself to be without jurisdiction, no finding is given on the said application.
12. In view of above, the impugned order dated 23 February 2011 is

quashed and set aside.

13. Appeal is allowed in the above terms. However, this would not preclude the respondent to issue fresh notice in accordance with law.

14. Since the impugned order is quashed and set aside , the suit is decreed in terms of prayer clauses (a) and (b) by holding that the impugned notice is bad in law.

[JITENDRA JAIN, J.]