

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Smt. Vidhya Chandrakant Patil ...Appellant/Orig.Plaintiff
Vs.
Municipal Corporation of Gr. Mumbai
Mr.Bisal S. Rath ...Respondents/Orig.Defdts.

CORAM : MRS. ROSHAN DALVI, J.
DATED : 9TH OCTOBER, 2015

Rule. Returnable forthwith.

1. The appellant/plaintiff challenged notice under Section 351 issued by the MMC on 10th may, 2012 for unauthorised enclosure of stilt area by constructing walls alongside the periphery of the building and fixing of rolling shutter thereon and also for unauthorised construction of garage with B.M. walls on two sides with R.C.C. Slab for the roofing and fixing of rolling shutter for the garage adjoining the stilt area of the building known as Rath Mansion.

2. The plaintiff replied to the said notice on 16th May, 2012 setting out how she has put up the construction without producing any documents. The Assistant Commissioner passed his order upon considering the plaintiff's reply on 19th October, 2012 which came to be challenged in the suit filed by the plaintiff in which the plaintiff took out the notice of motion which has come to be dismissed under the impugned order dated 19th December, 2014.
3. The plaintiff must show that the construction of the enclosure of the stilt area with the shutter and the garage with wall, roof and shutter is authorised or tolerable. Though the plaintiff did not initially rely upon any of her documents of title, the plaintiff has shown the Court two agreements dated 30th October, 1980 between the owners including respondent No.2 herein and the plaintiff. The plaintiff would claim that under the agreement the plaintiff agreed to acquire stilt area on the ground floor under flat No.9 for Rs.48000/-. The plaintiff paid earnest amount of Rs.1000/- and was to pay the remainder of Rs.47000/- on 15th February, 1981 which is not shown to be paid until now. The agreement shows that if the plaintiff failed to pay the second installment the earnest money would be forfeited and no claim would be made by her. The plaintiff has shown a plan of what is stated to be the stilt area annexed to the agreement. Clause 5(d) of

the agreement shows that the plaintiff as the purchaser would not enclose the stilt area till she obtained sanction of one N.R. Singh who allowed sanction for additional construction of Rath Mansion. The agreement further sets out the liability of the plaintiff if she enclosed the stilt area before obtaining sanction as agreed in the agreement. The agreement is unregistered. The plaintiff must show that she enclosed the stilt area as per law.

4. It may be mentioned that no citizen can allow another citizen to enclose or construct upon an area which cannot be enclosed or constructed upon under the law, whatever be the agreement between the parties and the agreement in that regard, being contrary to the law, would in fact be void under Section 23 of the Indian Contract Act.
5. The stilt portion is indeed enclosed. Various photographs are shown showing the enclosure from inside as on the date of the suit as also in 2015 when the MMC is stated to have taken inspection.
6. The plaintiff has produced certain plans which are stated to be plans sanctioning the construction of the premises under the notice. No plan is produced showing any sanction of the enclosure of the stilt portion. None can enclose any stilt portion. None can allow any person to

enclose stilt portion. Hence the enclosure of the stilt portion is seen to be wholly illegal and unauthorised. Notice in that respect is correctly issued and due legal process is followed. The rolling shutter put on the unauthorised enclosure is equally illegal and is not shown in any plan produced by the plaintiff. The impugned order not granting any protection to the stilt portion is correct and is required to be upheld.

7. With regard to the unauthorised construction of the garage the plaintiff has shown the Court a plan of 1981 for commencement of construction and a plan of 1982 for completion of construction. The plans are in respect of repairs to the proposed garage and not sanction for the construction of the garage. The garage is shown in pink colour. The walls of the garage are shown with dots. It is specifically mentioned that the walls would be 3 ft in height with 9" thick brick walls and with RC jali above. Hence the entire B.M wall has not been either applied for construction or sanctioned. It could not have been. The plaintiff has produced photographs of the garage. The jali as was required to be kept is not shown in any photographs. The garage is enclosed. The entire B.M walls not allowed is, therefore, seen to be not sanctioned.
8. The garage shows a sloping roof. There was a ramp to go up the garage. The ramp has been admittedly removed.

The roof is shown to be made flat. That is contrary to the roof shown in the plan for repair of the garage produced by the plaintiff.

9. The plaintiff has further relied upon a plan of 1985 which is for proposed office-cum-letter box room. This would be the society's office. The notice is not issued for the society's office. The plan shows that it is only for carrying out repairs to the existing authorised portion of the building. The plan shows an open MS staircase next to the society's office from letter box on the first floor portion and the enclosed garage on the ground floor portion beneath it. The plan shows a ramp on the North side of the garage. The staircase is also no more in existence. Counsel on behalf of the appellant stated that the plan is produced to show that if there was a society's office on the first floor there is bound to be a garage on the ground floor. That however does not show the plaintiff's case in respect of the notice structure. Even if there would be an enclosed garage it does not justify B.M walls enclosing the garage. Further it shows the ramp which justifies the earlier plan of 1982 which shows the slanted roof for the ramp going to the first floor level. The position at site is completely altered. Both the structures under the notice are not as per the sanctioned plan.

10. The plaintiff has also produced another agreement

dated 30th October, 1980 executed by and between the owners including respondent No.2 on the one hand and the plaintiff on the other as the purchaser. The agreement is in respect of block No.9 on the first floor of Rath Mansion. There is no dispute about the said block. The plaintiff relies upon clause 1 of the agreement in which the owners have allotted one car parking to the plaintiff as the purchaser. The owners have shown that they have no objection to the purchaser constructing the garage in place of the car parking. The construction must nevertheless be put up in accordance with law and upon making an application for such construction to the MMC under a plan and upon obtaining sanction in respect thereof which would consider inter alia the total FSI of the plot used up as also the place of the construction considering the compulsory open space of the building. A mere permission to construct which must be taken to be permission to construct only in accordance with law cannot take the plaintiff's case any further.

11. The garage is also seen to be unauthorised construction. The impugned order not granting any protection to the garage is correct and is required to be upheld.
12. Upon the documents of the plaintiff herself it is seen that both the suit structures are wholly unauthorised and illegally constructed. The notice for demolition is correctly

given. The impugned order is correctly passed.

13. The appeal is dismissed. Civil application is disposed off accordingly.
14. The interim order initially granted and continued until today shall continue for further 2 weeks.

(ROSHAN DALVI, J.)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**