

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.205 OF 2015
IN
FIRST APPEAL NO.695 OF 1997

Dattaram Babusheth Jadhav .. Applicant
-Versus-
The Mumbai Municipal Corporation
and Ors. .. Respondents

Mr.Sanjay D. Jadhav present on behalf of D.B.Jadhav applicant
is also present
Mrs.Surekha Sonawane for Corporation
Mr.V.C.Singh for respondent Nos. 3A to 3C, 4 to 8

CORAM : K.K.TATED, J.

DATE : 20th March 2015.

P.C.

1] Heard Mr.Sanjay Jadhav on behalf of Mr.Dattaram B. Jadhav, the applicant – party in person and Mr. Singh for respondent Nos. 3A to 3C and 4 to 8 and Mrs.Sonawane for Corporation.

2] In the present civil application, the applicant is seeking several reliefs namely, (a) construction made by the respondent Ns. 3(a) to 8 on the disputed suit land be removed; (b) respondents be

restrained from creating any third party rights and interests in respect of newly constructed property; (c) to direct officer to submit his report in respect of the construction carried out by the respondents; (d) that hearing of first appeal be expedited and (e) direct the Collector to submit his report in respect of the dispute in the present proceedings before this Court.

3] It is to be noted that in the present proceedings, the applicant is original plaintiff. He had filed L.C.Suit No.9566 of 1997 in the City Civil Court for following reliefs:-

“(a) It be declared that the notice issued by the defendants bearing No.WOP/GW/351/52 of 87-88 dated 19/10/1987 under section 351 of the BMC Act issued by the Deputy Municipal Commissioner, Zone -IV and/or any other notices, purported to have been issued under section 351 of the B.M.C. Act, earlier by the defendants, are bad-in-law, illegal, not in accordance with the provisions of law, malafide, without application of mind, arbitrary, unwarranted and uncalled for are liable to be

set aside and cancelled”

(b) that the defendants by themselves, by their servants and agents be permanently restrained by an order and injunction of this Hon'ble Court restraining them from removing pulling down, and/or demolishing the suit structure, the extension admeasuring 13' x 8' having wooden plank walls and A.C. sheet roof at Belwalkar Wadi, M.G.Road, Goregaon (W), Bombay 400 062 pursuant to the notice No.WOP/GW/351/52/87-88 dated 19-10-1987, issued by Deputy Municipal Commissioner, Zone -IV, or any other notice issued by the defendants.”

4] That suit was dismissed by the trial court by an order dated 10th June 1997. Thereafter, the applicant preferred the present first appeal which is admitted. For same reliefs the applicants have preferred two civil applications being Civil Application No.3635 of 2014 and Civil Application No.4136 of 2014. Out of these two applications, civil application No.4136 of 2014 withdrawn by the

applicant and Civil Application No.3635 of 2014 was decided by this Court on merits.

5] Considering these facts and that the issue involved in this proceedings was already decided by this Court in earlier civil application, I do not find any reason to entertain the present civil application, except prayer clause appearing in para 23(4) that is early hearing of first appeal. Hence, following order:-

(a) Civil Application stands dismissed;

(b) Hearing of First Appeal No.695 of 1997 is expedited;

(c) If the first appeal is ready for hearing, office is directed to place the matter on weekly board in the week commencing from 5th May 2015.

(d) Civil application is disposed of accordingly;

(K.K.TATED, J.)