

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER NO. 427 OF 2015

IN

L.C. SUIT NO. 454 OF 2015

Mr. Vinit Harakchand Dedhiya

.. Appellant

Vs.

Bombay Municipal Corporation of Gr. Mumbai

.. Respondent

Mr. Manoj Prajapati i/b Rushil Mehta for the Appellant.

Mr. A. V. Diwate for the Respondent.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 15th OCTOBER, 2015.

P.C.

1. Rule. Made returnable forthwith.

2. The appellant, plaintiff in the suit filed in the Bombay City Civil Court, has challenged the order refusing the ad interim relief by the Bombay City Civil Court in respect of the suit structure on 26.02.2015. The order is in respect of notice under Section 351 issued by the BMC. The notice is in respect of the construction of an unauthorized shed. The order shows the existence of the unauthorized shed in front of another structure which is a shop. That is stated to be shop No.4. Hence shop No.4 is not a structure under notice or under the impugned order. The shop cannot be demolished. The unauthorized structure is one shop later constructed and has to be demolished.

3. Upon the issue of the notice the plaintiff replied. The reply must be in respect of the unauthorized shed and not the shop. The reply does not show any document of the unauthorized shed. Hence an order of demolition has been passed against which ad interim relief is not granted.

4. The appellant/plaintiff has produced copies of number of documents. The documents show that the owners of the properties desired to develop their properties. It consisted of Ground+1 storey structure. Certain plans were submitted. The construction was to be carried out phasewise. Part of the plot came to under roadline. Hence there was a setback provided. The tenants of the shops had to be given permanent alternate accommodation in the new building. There were 4 shops. One of the shop is of the plaintiff. The construction has proceeded but has not been completed. The owner gave an undertaking that the owner would maintain temporary structure for the existing tenants. The owner further gave an undertaking that he would demolish the temporary structures before applying for occupation certificate/completion certificate. These temporary structures are the 4 shops of the 4 tenants. A proposed building on CTS Nos.19 & 19/1-6 is shown by the plaintiff. It shows Shop No.4. The plaintiff claims that shop. In fact, it shows 4 shops. It does not show 5 shops or 5 structures. Shop No.4 is shown to be of the carpet area of 342 sq. ft. Shop No.4 is shown to be meant for the plaintiff's predecessor-in-title and consequently the plaintiff.

5. The plaintiff filed R.A. Declaratory Suit in the Bombay Small Causes Court being Suit No. 3513 of 1987. The plaintiff and the landlord entered into Consent Terms. Under the Consent Terms the plaintiff allowed the defendant to demolish the structure upon the defendant's undertaking to provide an alternate accommodation in the new building which would be repaired and reconstructed. The Consent Terms showed that the plaintiff occupied Shop Nos.1 and 1-A admeasuring 520 sq. ft. carpet area. However the Consent Terms also provided that the defendant shall provide the plaintiff premises bearing No.4 admeasuring 342 sq. ft. in the newly building. This could be only if the plaintiff could be entitled to 342 sq. ft. The plan produced by the plaintiff of CTS Nos.19 & 19/1-6 showing the plaintiff's shop No.4 also shows an area of 240 sq. ft. The plaintiff was

shown to occupy shop Nos.1 as well as 1A admeasuring 520 sq. ft. in the Consent Terms. Hence clearly it is shown that the plaintiff's entitlement is to the extent of 342 sq. ft. The remainder is unauthorized construction which is called "1A". The Consent Terms recorded that the plaintiff occupied 1A. The Consent Terms did not record that that was authorized construction. The Consent Terms also did not record that the plaintiff was entitled to any alternate accommodation in the new building in lieu of shop No.1A or the area that it may have. Clause 16 of the Consent Terms shows an open space on the rear of the shop. The plaintiff alone is to be entitled to use the open space upto 7 x 14 ft. i.e. total area of 84 ft. with permission of the BMC. The plaintiff has produced a photograph of the suit structure. The photograph does not show any open space. It is that open space which has been unauthorizedly constructed upon. That construction is stated to be on the pump room of the building property. That much construction is required to be demolished under the notice.

6. Upon the documents of the plaintiff himself it is seen that the construction which was allowed to remain and which was authorized was one shop admeasuring 342 sq. ft. and no more. Any further shop, structure or construction though stated to be of the plaintiff cannot be protected. It would have to be demolished. It could not be demolished in the Small Causes Court suit. It had to be demolished upon notice being issued by the Planning Authority which is the Municipality. Hence this structure under the notice is not a structure of 342 sq. ft. The structure of 342 sq. ft. be it shop No.4 or shop No.1 cannot be demolished. The BMC does not desire to demolish that structure. The BMC has not given notice for that structure. That structure, therefore, is not the suit structure. The suit structure (which is termed structure/shop No.1A in the Consent Terms) is not only shown to be unauthorized but is shown to be unauthorized from the plaintiff's own documents. That structure has to be demolished. It is clarified that whatever is shop No.1A in the open space of the building which is stated to

be on the pump room of the building may be demolished as per the notice. Due legal process has been followed.

7. The impugned order is correct. The Appeal from Order is dismissed.

(ROSHAN DALVI J.)