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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4202 OF 2015

Aslam Gulam Mohammed Karte and others ... Petitioners

Vs.

Kalyan-Dombivli Municipal Corporation ... Respondent

Mr.Rajesh Datar, Advocate for Petitioners.

Mr.A.S.Rao, Advocate for Respondent.

CORAM : R. G. KETKAR, J.

DATE : 14th JULY, 2015

P.C. :

. Heard Mr.Rajesh Datar, learned Counsel for the petitioners and Mr.A.S.Rao, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 19/03/2015 passed by the learned Joint Civil Judge, Senior Division, Kalyan below Exhibit 16 in Regular Civil Suit No. 350 of 2014. By that order, the learned trial Judge rejected the application filed by the petitioners for framing additional three issues.

3. In support of this Petition, Mr.Datar strenuously contended that plaintiffs proposed framing of three additional issues.

Issue No.3 is to the following effect.

“Whether the defendant Corporation prove that they have followed due process of law before taking action as per notice ?”

4. He submitted that earlier petitioners had instituted Regular Civil Suit No. 235 of 2005. That suit was decreed on 30/11/2013. The learned trial Judge declared that intended act of the defendant – Corporation of laying road through the suit property and demolishing the structure standing on the suit property without following due process of law is illegal and bad in law. The respondent-defendant was restrained from demolishing structure standing on the suit property without following due process of law. It is in that context, plaintiffs have proposed additional issue No.3 extracted hereinabove. He submitted that having regard to the pleadings of the parties, the learned trial Judge ought to have framed that issue.

5. On the other hand, Mr.Rao supported the impugned order. He submitted that without prejudice to the rights and contentions of the Corporation, the Corporation is ready and willing to amicably settle the dispute with the plaintiffs. The respondent is ready and willing to offer either alternate land to the plaintiffs or T.D.R. in lieu of monetary compensation or even monetary compensation. As far as the merits are concerned, he submitted that the learned trial Judge had already framed issues below Exhibit 15 and issue No.1 takes care of proposed additional issues.

6. I have considered the rival submission made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiffs have suggested additional issues. In particular, by issue No.3, plaintiffs want defendant Corporation to prove that they have followed due process of law before taking action as per notice dated 11/12/2013. The learned trial judge had decreed the Suit as indicated earlier and directed the defendant-Corporation not to demolish the structure standing on the suit property without following due process of law. Prima facie, in my opinion, the very fact that notice admittedly issued by Corporation under Section 260 of the Maharashtra Municipal Corporation Act on 11/12/2013 itself amounts to following due process of law.

7. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)