

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.894/2015
WITH
CIVIL APPLICATION NO.1086/2015

Krishnakant Yashwant Worlikar

... Appellant

V/s.

Municipal Corporation for Greater Mumbai

...Respondent

Mr. Anand Mishra i/b. A. M. Saraogi for the Appellant
Mr. A. V. Divate for the Respondent.

CORAM: K.K. TATED, J.
DATED : AUGUST 5, 2015

PC. :

1. Heard the learned counsel for the parties. This appeal is preferred by the Plaintiff challenging the order dated 12/05/2015 passed by the Bombay City Civil Court, Mumbai in draft Notice of Motion in L.C.Suit (ST) No.5728/2015 declining to grant ad-interim relief.

2. For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. Appellant as Plaintiff and Respondent as Defendant.

3. The Defendant Corporation issued notice under section 354A (said notice) of the Mumbai Municipal Corporation Act, 1888 (said Act) dated 13/04/2015 in respect of the unauthorized construction i.e. "demolition of existing structure and erection of RCC column and

footing without permission from the competent authority”. Hence, the Plaintiff filed suit in Bombay City Civil Court, Mumbai challenging the said notice and restraining the Municipal Corporation from taking any coercive action. In that suit, the Plaintiff preferred Notice of Motion for ad-interim and interim relief. The Trial Court, by the impugned order dated 12/05/2015 declined to grant ad-interim relief. Hence, the present appeal.

4. The learned counsel for the Plaintiff submits that the Trial Court ought to have considered that on the date of issuing notice by the Defendant or thereafter the Plaintiff has not carried out any construction work. He submits that on the date of issuing notice, the construction work was completed and hence Defendant have no right to take coercive action against them. At the most, they may issue notice under section 351 of the said Act.

5. The learned counsel for the Plaintiff submits that the photographs placed on record by the Defendant along with their Affidavit-in-Reply dated 07/07/2015 are not pertaining to the suit property. To that effect, the Plaintiff filed additional affidavit dated 05/08/2015. The learned counsel for the Plaintiff further submits that that even the inspection report dated 13/04/2015 was not placed before Trial Court. Hence, that cannot be considered at the time of deciding the present appeal. He submits that the Plaintiff, by letter dated 27/03/2015 applied to the Corporation for permission to carry out repair work in respect of the house property bearing No.84A situated at Worli Koliwada, Worli, Mumbai – 400 030. He submits that,

this itself shows that the suit structure was in existence on the date of making an Application to the Defendant for permission to carry out repair work. The Plaintiff also relies on the assessment order for the year 2013-14 to show the existence of the suit structure. On the basis of this submission, the learned counsel for the Appellant submits that the impugned order passed by the Trial Court is required to be set aside and the Defendant may be restrained by an order of injunction from taking any coercive action against the Plaintiff pursuant to the said notice dated 13/04/2015 and order dated 07/05/2015 passed by the Defendant .

6. The learned counsel for the Defendant submits that the Plaintiff, in their Application dated 27/03/2015 for repairs specifically stated that their structure was in dilapidated condition and therefore, they require urgent repair permission.

7. The learned counsel for the Defendant submits that the Corporation, by their letter dated 08/04/2015 informed the Plaintiff that if they want to carry out tenantable repairs, they do not require any permission. The relevant portion of the said reply reads thus:

“With reference to above, it is to inform you that, the authorization of the structure under reference is not checked by this office. Please note that, as per section 342 of the MMC Act, if the structure is authorized, there is no permission required for the tenantable repairs.

However, please note that tenantable repairs shall mean;

1. *Providing gunting to the structural members of walls; and*

other architectural features.

- 2. Plastering, painting, pointing;*
- 3. changing floor tiles*
- 4. repairing W.C. bath or washing places*
- 5. repairing or replacing drainage pipes, traps manholes & other fittings*
- 6. repairing or replacing sanitary, water plumbing or electrical fittings.*
- 7. replacement of roof with the same material*

However, repair shall not include:

- 1. change in horizontal and vertical existing dimensions of the structure.*
- 2. replacement or removal of any structural members or load bearing walls*
- 3. lowering of plinth, foundations or floors*
- 4. additions and/or extension of mezzanine floor or loft and*
- 5. flattening of roof or repairing roof with different material.”*

8. The learned counsel for the Defendant submits that the Plaintiff, without obtaining any permission from the Corporation, demolished the entire structure and started erecting new one.

9. The learned counsel for the Defendant submits that on the date of issuing the said notice, the work was in progress. In support of this submission, the learned counsel for the Defendant relied on photographs on page Nos.49 to 51 of their Affidavit-in-Reply dated 07/07/2015. He submits that those photographs were taken on 15/04/2015 itself. He submits that the photographs itself show that the Plaintiff, by demolishing the suit structure, started erection of new one. He submits that pursuant to the said notice u/s. 354A the Plaintiff filed reply dated 13/04/2015. He submits that the reply filed by the

Plaintiff was considered by them and passed order dated 07/05/2015 calling upon the Plaintiff to remove notice structure within 24 hours from the receipt of that order.

10. The learned counsel for the Defendant Corporation submits that even though the Designated Officer passed order on 17/05/2015, the Plaintiff continued the unauthorized construction. In support of this contention, the learned counsel for the Defendant Corporation relies on photographs on page No.60, 61 and 62. He submits that all these photographs are taken on 09/05/2015.

11. Hence, the Plaintiff is not entitled to any relief from this court. He submits that these facts are considered by the Trial Court and rejected the Application filed by the Plaintiff for ad-interim relief. Hence, there is no substance in the Appeal from Order. Same be dismissed with costs.

12. Heard the learned counsel for the parties. I have gone through the papers and proceedings placed before this court and Affidavit-in-Reply dated 07/07/2015 filed by the Defendant Corporation. Admittedly, in the present proceedings, the Plaintiff, by his letter dated 27/03/2015 made Application to the Corporation stating that the suit structure is in dilapidated condition and he required urgent permission to carry out repairs. The Corporation, by reply dated 08/04/2015 informed the Plaintiff that if they want to carry out tenantable repairs, they do not require any permission from the Corporation. Instead of carrying out tenantable repairs, the Plaintiff demolished the entire old

structure and started construction of new one with RCC column. From photographs at page Nos.40 to 51, it is clear that the Plaintiff removed the entire old structure and started new construction with RCC column. Moreover, even after passing the order by the competent authority on 07/05/2015, Plaintiff continued the work of unauthorized construction which is crystal clear from the photographs at page Nos.60 to 62 which were taken on 09/08/2014. This itself shows that in spite of said notice issued by the Defendant dated 13/05/2015, the Plaintiff continued unauthorized construction. These facts are considered by the Trial Court in detail. I do not find any reason to interfere with the well reasoned order passed by the Trial Court.

13. Hence, the Appeal from Order stands rejected.

14. Consequently, the Civil Application stands dismissed as infructuous.

(K.K. TATED, J.)