

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

APPEAL FROM ORDR NO.732 OF 2015
WITH
CIVIL APPLICATION NO.892 OF 2015

Rajkumar Lalchand Pahuja

... Appellant

V/s.

Brihanmumbai Mahanagar Palika & Ors.

...Respondents

Mr. C. M. Kothari i/b. Sandeep Maurya for the Appellant
Mrs. M. R. Bhoir for Municipal Corporation.
Mr. Prashant P. Kulkarni for the Respondent No.8.

CORAM: K.K. TATED, J.
DATED : JUNE 18, 2015

PC. :

1. Heard the learned counsel for the parties. By this appeal, the Plaintiff challenges the order dated 08/05/2015 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.2734/2011 in L.C.Suit No.2539/2011 dismissing the Plaintiff's Notice of Motion.

2. The issue in the present proceedings is "whether the construction carried out by the Plaintiff i.e. a room on the terrace below water tank with C.I. Sheet wall is authorised".

3. Initially, the Respondent Corporation issued notice dated 04/08/1984 in respect of the unauthorised construction. The same was challenged by the Brother of the Plaintiff by preferring L.C.Suit

No.4805/1984 in Bombay City Civil Court, Mumbai, wherein the Plaintiff preferred Notice of Motion No.3789/1984 for stay of the said notice. The Trial Court declined the same. Hence, brother of the Plaintiff preferred Appeal from Order No.922/1986 in this court, wherein, by order dated 02/12/1986, this court directed the Corporation to give hearing to the Plaintiff in L.C.Suit No.4805/1984 and decide the matter on merits. Pursuant to the said order, the Municipal Corporation, after hearing the parties, passed order dated 16/10/2011 directing the Plaintiff to remove the unauthorized construction below water tank on 8th floor of Jasmin Apartment CHS, Dadasaheb Phalke Road, Dadar (E), Mumbai – 400014 (said unauthorised construction). As the Plaintiff failed to comply with the said order, the Corporation issued notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (said Act) dated 20/10/2011 calling upon the Plaintiff to remove the said unauthorised construction which is in contravention of the approved plan sanctioned under No.EB/7871/A dated 30/05/1967 of Jasmin Apartment CHS, Dadasaheb Phalke Road, Dadar (E), Mumbai – 400014.

4. Being aggrieved by the said order passed by the Corporation and notice under section 53(1) of the said Act, the Plaintiff preferred L.C.Suit No.2539/2011 before the Trial Court, wherein the Plaintiff preferred Notice of Motion No.2734/2011 restraining the Respondent Corporation from taking any coercive action against the Plaintiff in respect of the unauthorized construction. That Notice of Motion was decided by the Trial Court on 08/05/2015 declining to grant any interim relief. Hence, the present Appeal from Order.

5. The learned counsel for the Plaintiff submits that the impugned order passed by the Trial Court is against justice, equity and good conscience and same is required to be set aside. He submits that the Corporation passed the order dated 16/10/2011 without giving any opportunity to the Plaintiff. Hence, the Plaintiff is entitled to interim relief in the present Appeal from Order during pendency of the suit. He further submits that the Plaintiff has not carried out the said unauthorized construction at all. He submits that the Plaintiff is occupying the said room for last several years. He submits that the Plaintiff is not sole owner of the said room but he is co-owner and as the notice is not issued under section 53(1) of the said Act to the co-owner, same is bad in law. He further submits that there is delay on the part of the Corporation to take steps immediately. He submits that earlier the Corporation issued notice for removing the unauthorized construction in the year 1983. Same was not complied with by them and thereafter they issued another notice on 19/04/2010. Considering the delay on the part of the Corporation to take action, the Plaintiff is entitled to interim relief during pendency of the suit.

6. The learned counsel for the Plaintiff further submits that the notice issued by the Corporation dated 19/04/2010 and 20/10/2011 is vague. In the said notice, the Corporation has not given specific dimension of the unauthorized construction. Hence, the Respondent cannot act on the said notice. He further submits that as per the sanctioned plan of the said building, there is no water tank on the terrace and hence, the Corporation has no right to take any action against the Plaintiff. He further submits that though this court, by order dated 02/12/1986 passed in Appeal from Order No.922/1986

directing the Corporation to give hearing to the Plaintiff before passing any order, same was not complied with by the Corporation. Hence, the Corporation has no right to take any action against the Plaintiff. On the basis of this submission, the learned counsel for the Plaintiff submits that they have made out a prima facie case to stay the operation and implementation of the notice dated 19/04/2010, order dated 16/10/2011 passed by the Corporation and notice dated 20/10/2011 issued under section 53(1) of the said Act. He submits that at present, the Plaintiff and his family is residing in the said room. He submits that if interim relief is not granted, irreparable loss and injury will be caused to the Plaintiff.

7. On the other hand, the learned counsel for the Corporation vehemently opposed the present Appeal from Order. He submits that the Trial Court categorically held on the basis of documents that the said unauthorized construction is below the water tank on terrace. He submits that the Corporation has never authorized the builder or the Plaintiff to construct any room below the water tank. He submits that the construction of the room on terrace below water tank on 8th floor is in contravention of the approved plan vide No.EB/7871/A dated 30/05/1967 of Jasmin Apartment CHS, Dadasaheb Phalke Road, Dadar (E), Mumbai – 400014. Hence, the Plaintiff is not entitled to any relief from this court.

8. The learned counsel for the Respondent No.8 society also vehemently opposed the present Appeal from Order. He submits that they never permitted the Plaintiff to construct any room below the water tank on terrace. He submits that the Plaintiff is occupying the

said unauthorized room without any permission from the society. Hence, the Plaintiff is not entitled to any relief from this court.

9. Heard both side at length. Admittedly, there is no dispute that the suit structure in the present proceeding is on terrace below the water tank. The Plaintiff has not placed on record any documentary evidence to show that the Corporation has permitted him or his predecessor to construct the same below the water tank. The objection raised by the Plaintiff in respect of the ownership/ co-ownership, delay on the part of the Corporation to take action, non existence of water tank, non giving opportunity by the Corporation, is not necessary to consider at this stage because the Plaintiff has placed on record not a single document to show that the said construction is carried out by him or his predecessor with permission from the Corporation. In any case, the said construction is on terrace of the building and i.e. also below water tank which cannot be permitted.

10. Hence, I do not find any substance in the Appeal from Order. Same stands rejected.

11. In view thereof, Civil Application stands dismissed as infructuous.

12. At this stage, the learned counsel for the Plaintiff submits that the operation and implementation of this order be stayed for 6 weeks.

13. Considering the fact that the said unauthorized construction is on terrace and that too below the water tank, the oral request for stay stands rejected.

(K.K. TATED, J.)