

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 918 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 1118 OF 2015****IN****APPEAL FROM ORDER NO. 918 OF 2015****Mrs.Babita Eknath Irale****..... Appellant****VERSUS****Municipal Corporation of Greater Mumbai
& Anr.****..... Respondents**

Mr.Rajendra Mishra for the Appellant.

Mr.S.K.Sonawane, a/w. Mr.A.V.Diwate for Respondent No.1/BMC.

Mr.Rajiv Kumar, Senior Advocate, a/w. Mr.Omkar Kulkarni, i/b. Ms.Reena Salunke for the Respondent No.2.

CORAM : R.D. DHANUKA, J.**DATED : 15th DECEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order dated 29th June, 2015 passed by the learned trial judge refusing to grant ad-interim relief in the notice of motion filed by the appellant (original plaintiff) inter alia praying for injunction against the Municipal Corporation from taking any action pursuant to the notice dated 23rd April, 2015 alleging unauthorised construction and the impugned order dated 19th May, 2015 directing demolition of structure.

2. Mr.Mishra, learned counsel for the appellant invited my attention to the notice issued under section 351 of the Mumbai Municipal Corporation alleging unauthorized construction in the suit property and also to the reply given by the plaintiff to the designated officer on 2nd May, 2015. He submits that though the

Municipal Corporation had received the said reply on 19th May, 2015 the Corporation passed an order mechanically alleging that there was no reply given by the plaintiff to the said notice dated 23rd April, 2015 issued by the Municipal Corporation. My attention is also invited to an order dated 21st May, 2015 passed by the designated officer and would submit that after two days of passing of the earlier order passed by the designated officer in the said order dated 21st May, 2015, the designated officer has purported to have examined the documents produced by the plaintiff. My attention is also invited to a note appended to the said order and it is submitted that by the said note the designated officer has purported to have clarified that the reply was received by his office on 20th May, 2015 and after considering the said reply, the said order dated 21st May, 2015 was passed. It is also clarified in the said order that earlier order did not pertain to the plaintiff. He submits that it is thus clear that even the said order dated 21st May, 2015 passed by the designated officer has been passed mechanically and without considering the documents produced by the plaintiff.

3. It is submitted by the learned counsel for the appellant (original plaintiff) that the appellant came in possession of the suit structure on 14th June, 2011 pursuant to the sale agreement entered into between the appellant and the predecessor in the title of the said structure and since then he is in possession. He submits that since the appellant is in established possession of the suit structure since 2011, no notice could be issued by the Municipal Corporation under section 351 of the Mumbai Municipal Corporation Act. He submits that the notice had been issued by the Municipal Corporation at the instance of the respondent no.2 developer and is issued with malafide intention.

4. Mr.Kumar learned senior counsel appearing for the respondent no.2 and Mr.Diwate appearing for the Municipal Corporation relied upon the prima facie

observations made by the learned trial judge in the impugned order. It is submitted that in the impugned order dated 21st May, 2015, the learned designated officer has made it clear that the reply of the plaintiff was received by the office of the designated officer on 20th May, 2015 and the same was considered accordingly.

5. I have perused the order passed by the learned trial judge. I have called upon the learned counsel for the appellant to produce the documents for consideration of this court afresh to demonstrate that the suit structure was constructed after obtaining prior permission of the Municipal Corporation or that the structure was in existence prior to the datum line or if the structure was situated in a slum area and was a slum structure.

6. Learned counsel for the appellant invited my attention to the documents which are annexed to the plaint and would submit that in addition to those documents, the plaintiffs do not have any other document to show that any prior permission of the Municipal Corporation was obtained before carrying out construction of the suit structure. He submits that merely because the documents produced by the appellant would not indicate that the structure was in existence prior to the cut off date, the Corporation could not take any action merely on that basis and more particularly at the instance of the respondent no.2 developer who is interested in demolition of the structure of the appellant.

7. It is not in dispute that the appellant did not have any permission from the Municipal Corporation for constructing the suit structure. The appellant is also not in a position to produce any such permission granted by the Municipal Corporation in favour of the predecessor in title of the appellant for constructing the suit structure.

8. A perusal of the impugned order dated 21st May, 2015 passed by the designated officer of the Municipal Corporation indicates that the learned designated officer has considered all the documents produced by the plaintiffs and has come to the conclusion that the authenticity of the documents has not been proved by the plaintiffs. The plaintiff has also not been able to prove that the suit structure was in existence prior to the datum line.

9. Though an opportunity was rendered to the appellant by this court to satisfy the conscious of this court whether any of those documents were prior to the date of datum line or whether the structure was constructed after obtaining after prior permission of the Municipal Corporation, the appellant is not able to produce either the prior permission for carrying out construction for the structure in question or that the said structure was in existence prior to the datum line.

10. In my view, the learned trial judge was thus justified in refusing to grant ad-interim relief. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly disposed of. No order as to costs.

11. On oral application of Mr.Mishra, learned counsel for the appellant, the ad-interim protection granted by the trial court to continue for a period of eight weeks from today on the condition that the appellant will not carry out any further construction on the suit property. If any special leave petition is filed by the appellant, a copy thereof alongwith annexures shall be served upon the respondents in advance.

[R.D. DHANUKA, J.]