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

**APPEAL FROM ORDER (L) NO.23371 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 23375 OF 2015
IN
APPEAL FROM ORDER (L) NO.23371 OF 2015**

Paper Box Company of India ...Applicant

In the matter between:

Paper Box Company of India ...Appellant/Orig. Plaintiff

Vs.

Municipal Corporation of Greater
Mumbai & Ors. ...Respondents/Orig.Dfdts.

Mr. Dinyar D. Madon, Sr. Advocate a/w. Mr. Vishesh Kalra
i/b. Vidhii Partners for Appellant

Mr. Aspi Chinoy, Sr. Counsel a/w. Mr. Victor Alex Almeda
for Respondent No.3

Mr. A.Y. Sakhare, Sr. Counsel a/w. Mr. S.K. Sonawane &

Mr. A.V. Divate for Respondent Nos. 1 & 2 in MCGM

Mr. Ashwin V. Sakolkar for Respondent No.4

**ALONG WITH
APPEAL FROM ORDER (L) NO. 23540 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 23541 OF 2015
IN
APPEAL FROM ORDER (L) NO. 23540 OF 2015**

Corrugating and punching Industries ...Applicant

In the matter between:

Corrugating and Punching Industries ...Appellant/Orig.Defdt.4
Vs.
Municipal Corporation of Greater
Mumbai & Ors. ...Respondents/Orig.Dfdts.
(Nos. 1 to 3 Orig. Defendants & No.4 Orig. Plaintiff)

Mr. Sharan Jagtiani i/b. Mr. Ashwin V. Sakolkar for Appellant
Mr. Vishesh Kalra i/b. Vidhii Partners for Respondent No.4

CORAM : MRS. ROSHAN DALVI, J.
DATED : 3RD SEPTEMBER, 2015

P.C. :

Rule. Returnable forthwith.

1. The appellant / plaintiff has sought protection against demolition of a gate and a watchman's cabin next to the gate of the appellant's property. The appellant claims to be a lessee of plot No.46/16 with what he calls a garden in front thereof. The gate is stated to be on a no development zone (NDZ) bearing No.46 part.
2. The adjoining plot bearing No.46/13 belongs to respondent No.4 / defendant No.4. The ownership of the land is stated to belong to respondent No.3 / defendant No.3 who is the successor-in-title of the original lessor of the plaintiff and defendant No.4. The plaintiff has obtained a lease of the land. Clause 2(l) of the lease requires the plaintiff to develop the hilly plot of land and “construct the approach road connecting the cross road at the foot of leased

plot of land” at the cost of the plaintiff. A similar lease in favour of defendant No.4 is stated to contain an identical clause. The access road gives access only to the property of the plaintiff and defendant No.4 and the NDZ plot.

3. The entire land leased to the plaintiff and defendant No.4 and the NDZ plot is bounded by a compound wall. Part of the boundary wall is a retaining wall since a part of the area leased to the plaintiff and defendant No.4 is a hilly plot of land as shown in clause 2(l) cited above.
4. There is no dispute with regard to the compound wall surrounding the entire plot. The suit construction being the gate with pillars on two sides and the watchman cabin is alongside the wall. The parties have produced photographs of a large part of the wall as also the suit construction.
5. The plaintiff had to develop the plot of land leased to it. An IOD has been issued for the plaintiff's plot of land bearing No.13A at Mahal Industrial Estate, Andheri(East), Mumbai on 13th March, 1976. The plaintiff was called upon to construct inter alia a compound wall under the said plan. That compound wall is wholly different from the total compound wall surrounding the plot of the plaintiff as also defendant No.4 and the NDZ plot.

6. The suit gate is on the compound wall surrounding the plot of the plaintiff bearing No.46/16, the plot of defendant No.4 bearing No.46/13 as also the NDZ plot No.46 part. Within such plot the plaintiff as also defendant No.4 were to construct the access road. The access road called the “approach road” would connect the cross road at the foot of the plaintiff's plot of land. At the corner of the access road where the NDZ plot would begin is the suit structure.
7. The plaintiff claims that the wall around such entire plot is constructed by the plaintiff as per clause 2(l). The access road by defendant No.4 would be constructed by defendant No.4. That would be at around the time of the lease. The lease deed is dated 1st August, 1971.
8. It is argued on behalf of the plaintiff, and it prima facie stands to reason, that there had to be a gate within the compound wall of the entire plot bearing Nos. 46/16, 46/13 and 46 part. In fact of the construction of the compound wall with a gate would show the access to be had only to the 2 plots of the plaintiff and defendant No.4 and the NDZ plot. It would admit entry of only the persons going to the property of the plaintiff, defendant No.4 and to the NDZ plot and to none else.

9. It is argued on behalf of defendant No.3, who is the successor-in-title of the original lessor, that there could be no gate on the access road.
10. The access road is shown on a layout plan. The layout plan indeed does not show any gate. However the layout plan does show the compound wall at the cross road running North as also East. The layout plan does not show gates to any of the other properties. The access road gives access only to the plaintiff and defendant No.4. There is shown to be a dispute between the present lessor and the plaintiff as the lessee with regard to the NDZ plot No.46 part. There is no lis filed in that behalf yet. The access road would give access to the NDZ plot. If that plot is not leased to the plaintiff by the defendant No.4 it would continue to belong to the lessor. Hence it is claimed that the access road would give access to the lessor and that access is prevented by the suit structure, which is the gate, the two pillars by the side of the gate and the watchman's cabin. It is argued that 18 ft. of space has been permanently restricted to the lessor by the suit construction.
11. There would be two aspects which would have to be considered in determining the authorisation of the suit construction.

1. The fact of the plaintiff having put up the wall around the entire aforesaid plots. No part of the wall is seen to be broken. It would be presumed to have a gate. This would be fortified by the fact that two access roads; one going East and one going North would require to be constructed by the plaintiff and defendant No.4, which gives access to none other in the layout plan.
2. The watchman's cabin would be quite different. It is seen to be a separate construction on the approach road. Mr. Madon on behalf of the plaintiff /appellant fairly conceded that that watchman's cabin would be removed as it is a structure constructed on the approach road; the plaintiff would put up a portable cabin there.
3. The gate is expected to be and presumed to be around the compound wall. Compound wall must enclose the entire plot. Compound wall is not expected to keep a part of the plot open. However there is no gate otherwise on an approach and access road and is, therefore, not shown on the layout plan. Yet the fact remains that the approach road / access road is not meant for access to any of the other plots in the layout plan. The plots further North in the layout plan are

shown to be at a lower level by a crooked dotted line. That is plot No.46/42 shown in the layout plan as Neeraj Industrial Premises. That plot belongs to the lessor. There is no access to that plot from the suit gate or the access road constructed by the plaintiff or defendant No.4. Consequently the gate at the “cross road” would not cause the same hardship, inconvenience etc., to anybody in the layout.

12. The gate could, therefore, be presumed to have been allowed to be constructed at about time of the lease when the plaintiff was allowed to construct the compound wall around the aforesaid entire plot.
13. It is argued that even if that be so, it would be a construction after 1971 and hence is not tolerable as being before the datum line of 1962. The compound wall would be constructed under a sanctioned plan. There is no challenge to the construction of the compound wall. The plan under which this compound wall was constructed is not produced either by the plaintiff, defendant No.3 or by the MMC. The Court would require to see that plan to ascertain whether the gate which is a suit structure was shown therein. Hence the sanctioned plan of the compound wall would be required to be produced in the trial.

14. Mr. Madon claims that a gate is not a structure as defined under Section 2(s) of the MMC Act. Mr. Chinoy claims that the gate with two pillars of brick masonry would tantamount to a structure. The gate is within the compound wall (for which there is no objection by the present lessor or the MMC). The trial Court would require to see whether the gate in a compound wall, which would be implied to have been constructed at the time the compound wall was constructed, would tantamount to a separate independent structure which can be separately demolished whilst the compound wall remains. The trial Court would also have to see whether the pillars on which the gate rests were also constructed at the same time as the compound wall and the gate therein and would require to be separately and independently seen as structure.
15. The watchman's cabin used for the seating of the watchman, consisting of walls and a roof, is indeed different and the plaintiff's concession for removing the watchman's cabin is understandable and must be directed to be acted upon.
16. Having seen that though the suit structure has been put up along with the compound wall, with which no party has any dispute, the suit structure alone cannot be directed to be

demolished without a consideration of all the aforesaid facts, which would be required at the time of the notice of motion, or even more appropriately, at the trial.

17. Consequently upon the mere conclusion that the gate has not been existing prior to 1973, when it is stated to have been put up by the plaintiff in the compound wall surrounding the entire plot, would be myopic and consequently incorrect. This case would require further consideration. Hence prima facie case of allowance of putting up the compound wall (which has the gate) by the original lessor as also the municipal authority which approved the layout of the entire plot is seen to be made out for protection of the suit structure except the watchman's cabin pending the notice of motion in the trial Court. The appeal is, therefore, allowed. The impugned order is set aside. There shall be an injunction against the MMC from demolishing the gate and the pillars upon which it is affixed pending the notice of motion in the trial Court.

18. The appeal as well as the civil application are disposed off accordingly.

19. Mr. Madon on behalf of the plaintiff /appellant applies for 2 weeks time to remove the watchman's cabin. The plaintiff is given 2 weeks time for the same.

20. The plaintiff shall be entitled to apply for permission to put up any portable cabin in accordance with law, if required.

21. In view of this order Appeal from Order No. 23540 of 2015 filed by defendant No.4 against the same impugned order with regard to the same suit structure does not survive and is accordingly disposed off.

(ROSHAN DALVI, J.)