

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8409 OF 2013

Saroja Seemon ... Petitioner
Vs.
Thane Municipal Corporation and another ... Respondents

WITH
CIVIL APPLICATION NO.1716 of 2015

The Matis Villa CHS Limited ... Applicant
In the matter between
Saroja Seemon ... Petitioner
Vs.
Thane Municipal Corporation and another ... Respondents

Mr. Anil D. Joshi for Petitioner.
Mr. Mandar Limaye for Respondent No.1 Corporation.
Mr. Umesh Desai for Applicant in C.A.1716 of 2015.

CORAM : R. G. KETKAR, J.
DATE : 6TH JULY, 2015

P.C. :

Heard Mr. Joshi, learned Counsel for petitioner, Mr. Limaye, learned Counsel for respondent No.1 and Mr. Desai, learned Counsel for applicant in C.A.No.1716 of 2015.

2. By this Petition under Article 227 of the Constitution of India, petitioner – original plaintiff has challenged the judgment and order dated 19.08.2013 passed by the learned District Judge-10, Thane in Miscellaneous Civil Appeal No.35 of 2013. By that order, the learned District Judge allowed the Appeal preferred by the respondent No.1 herein, hereinafter referred to as the defendant No.1 and quashed and set aside the judgment and order dated 01.01.2013 passed by the learned 5th Joint Civil Judge, Senior Division, Thane below exhibit-5 in Special Civil Suit No.389 of 2012. The learned District Judge dismissed the

application filed by the plaintiff for temporary injunction restraining the defendant No.1 from implementing the notice dated 31.05.2012 issued under Section 260(1)(2) as also the notice dated 16.06.2012 issued under Section 267 of the Maharashtra Municipal Corporations Act (for short 'Act').

3. The learned trial Judge while allowing the application exhibit-5 held that the documents produced by the plaintiff prima facie discloses that the construction of the suit flat is legal and authorised. The notice under Section 260 does not disclose or specify the description of the unauthorised construction. The notice is vague as regards description of the unauthorized construction.

4. Mr. Limaye, upon taking instructions from Mr. Maruti P. Gaikwad, Assistant Commissioner, Thane Municipal Corporation, who is present in the Court, states that defendant No.1 Corporation will withdraw notice dated 31.05.2012 issued under Section 260(1)(2) as also the notice dated 16.06.2012 issued under Section 267 of the Act reserving liberty to issue fresh show cause notice. He submits that since the Suit instituted by the plaintiff challenges the said notices, in view of the withdrawal of the notices, the Suit will not survive and the same may be disposed of as infructuous. Mr. Joshi states that he has no objection and he will move the trial Court for withdrawal of the Suit.

5. In view thereof, Petition is disposed of in the following terms:

- (a) Notice dated 31.05.2012 issued under Section 260(1)(2) as also the notice dated 16.06.2012 issued under Section 267 of the Act are allowed to be withdrawn with liberty to the defendant No.1 Corporation to issue fresh notice;
- (b) In view of the withdrawal of the Notices, Special Civil Suit

No.389 of 2012 does not survive and the same is disposed of as infructuous;

- (c) Plaintiff shall produce authenticated copy of this order before the trial Court for formal withdrawal of the Suit;
- (d) Refund of the Court fees as per Rules;
- (e) Order accordingly.

6. In view of the disposal of the Appeal, nothing survives in Civil Application No.1716 of 2015 for intervener and the same is disposed of as such.

(R. G. KETKAR, J.)

Minal Parab