

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 30707 OF 2014
WITH
CIVIL APPLICATION (ST.) NO. 30708 OF 2014

Mr.Chhotelal Chunilal Yadav and another.	...	Appellants.
V/s.		
The Municipal Corporation of greater Mumbai and others.	...	Respondents.

Induprakash Tripathi i/b. C.K.Tripathi for the appellants.

A.V.Diware for respondent Nos.1 and 2.

Rakesh Agrawal for respondent No.3.

CORAM : R.D. DHANUKA, J.

DATED : 14th December 2015.

PC.

By this appeal filed by the appellant/ original plaintiff No.1, the appellant has impugned the order dated 18th November 2014 passed by the learned trial Judge refusing to grant ad-interim relief in so far as plaintiff No.1 is concerned.

2. Mr.Tripathi, learned counsel appearing for the appellant/ original plaintiff No.1 submitted that appellant was granted permission by respondent- Municipal Corporation by letter dated 30th March 1999. He submits that the Municipal Corporation thereafter issued notice under the

provisions of section 55 of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act" for short) dated 13th May 2013 in respect of alleged extension of certain portion. He submits that out of the said measurement mentioned in the said notice, the appellant was already granted permission in respect of area admeasuring 10.5 mtrs. X 4.25 mtrs. and 7.60 mtrs. X 4.25 mtrs. He submits that notice issued by the Corporation under section 488 of the Mumbai Municipal Corporation Act, 1988 ("MMC Act" for short), does not refer to any alleged extension carried out by the appellant over and above the area in respect of which the trial Court had already granted ad-interim injunction in favour of the appellant (original plaintiff No.1).

3. The learned counsel appearing for respondent- Municipal Corporation has invited my attention to the said permission dated 30th March 1999 issued by the Corporation and also notice dated 13th May 2013 under section 55 of the MRTP Act and notice dated 11th November 2014 under section 488 of the MMC Act both issued by the Municipal Corporation.

4. Perusal of the documents to which my attention was drawn by learned counsel for respondent- Corporation indicates that the Municipal Corporation had granted permission to the appellant (original plaintiff No.1) by letter dated 30th March 1999 only in respect of the area admeasuring 10.5 mtrs. X 4.25 mtrs. and 7.60 mtrs. X 4.25 mtrs. There is no dispute that the learned trial Judge has already granted protection in favour of the appellant in respect of the said area mentioned in the said

permission. The dispute arose between the parties in respect of notice dated 11th November 2014 issued by the Municipal Corporation under section 488 of the MMC Act.

5. Perusal of the notice dated 13th May 2013 clearly indicates that the Municipal Corporation had alleged that the appellant had extended exiting shed with G.I. Sheet wall admeasuring 11.4 mtrs X 1.89 mtrs. It is, thus, clear that the appellant had extended the shed which was permitted to be constructed as per permission granted vide letter dated 30th March 1999. Since the appellant did not remove the extended portion pursuant to the notice dated 13th May 2013, the Municipal Corporation issued another notice under section 488 of the MMC Act dated 11th November 2014. I am not inclined to accept the submission made by learned counsel for the appellant that in the said notice dated 11th November 2014 there was no reference to the extended portion alleged to have been constructed by the appellant. A perusal of the said noticed dated 11th November 2014 clearly indicates that the Municipal Corporation had proposed to demolish noticed structure as per notice dated 13th May 2013 in which the Corporation had described the extended portion. The notice dated 11th November 2014, therefore, will have to be read with notice dated 3rd May 2013. The appellant could not produce any permission even before this Court for carrying on the construction of the extended portion.

6. In my view, the learned trial Judge was, thus, right in rejecting ad-interim relief in respect of the extended portion which was

covered by notice dated 13th May 2013 read with notice dated 11th November 2014. The appeal is devoid of any merits and is, accordingly, dismissed. In view of dismissal of appeal, civil application does not survive and stands disposed of accordingly.

7. The oral application of learned counsel for the appellant to continue the order of ad-interim relief passed by this Court on 24th November 2014 for a period of four weeks is rejected. Parties to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)

Sanjay Nanoskar, P.S..