

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 30715 OF 2014
WITH
CIVIL APPLICATION (ST.) NO. 30716 OF 2014

Pyarelal Dhobi.	...	Appellant.
V/s.		
Municipal Corporation of Greater Mumbai and others.	...	Respondents.

Niranjan Mogre i/b. Nilesh Rathod for the appellant.

A.V.Diwate for respondent No.1- MMC.

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.6, 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.6 is concerned. The learned counsel appearing for the appellant submits that the appellant has right to suit structure under the writings executed in the month of October 2008 from the original owner of the suit structure and another writing executed subsequent to the said deed of assignment.

2. The Municipal Corporation, in this case, issued notice under section 55 of the Maharashtra Regional Town Planning Act dated 13th May 2013 for taking action against the structure in question. A similar notice was also issued in respect of other structures constructed by original plaintiff Nos.1 to 5. All the plaintiffs filed a common suit being L.C. Suit No.1653/2013 in the City Civil Court, Mumbai and applied for interim relief by filing Notice of Motion No.2571/2015.

3. It appears that on 31st May 2013 the respondent No.3 applied for impleadment by filing a chamber summons. All the plaintiffs appeared through a common advocate. The learned trial Judge passed an order of maintenance of status-quo in respect of area admeasuring 10.5 mtrs. X 4.25 mtrs. and 7.60 mtrs. X 4.25 mtrs. as per the permission granted by the Corporation by letter No.WOR/N/43742/AEM-I and in possession of plaintiff No.1 and noticed structures of other plaintiffs subject to production of permission granted by the Municipal Corporation within ten days.

4. A perusal of the record indicates that the said notice of motion was thereafter adjourned on several occasions. None of the plaintiffs produced any permission granted by the Municipal Corporation in respect of any of the structures, whether of plaintiff Nos.2 to 5 or plaintiff No.6.

5. All the plaintiffs thereafter filed notice of motion for initiating an action of contempt against the Municipal Corporation for not having

issued any notice for implementation of notice issued under section 55 of the MRTP Act and for an attempt to demolish the suit structure without such notice. There is no dispute that the said proceeding filed by the plaintiffs including plaintiff No.6 was dismissed by the learned trial Judge on 31st July 2014. It is the case of respondent No.3 that the appellant herein was also applicant to the said contempt proceedings.

6. The Municipal Corporation thereafter issued a notice under section 488 of the MMC Act for demolishing of the suit structure. A separate notice of motion was moved by the plaintiffs, *inter alia* praying for stay of the said notice issued under section 488 of the MMC Act.

7. On 5th November 2015, plaintiff No.6 applied before the learned trial Judge under order 23 rule 1 sub-rule (3) of Code of Civil Procedure, 1908 ("C.P.C." for short) contending that cause of action of plaintiff No.6 was different than the cause of action of other plaintiffs and leave be granted to him to withdraw the said suit in so far as he was concerned and file a separate suit. The said application is still pending.

8. The original notice of motion filed by all the plaintiffs, the draft notice of motion moved by plaintiff Nos.1 to 5 and Notice of Motion No.2571/2014 appeared before the learned trial Judge. A perusal of the order passed by the learned trial Judge indicates that even on the date of hearing of the said interim applications, none of the plaintiffs produced any permission from the Municipal Corporation for construction of the noticed structures. The defendant No.3, who was impleaded pursuant to

the order passed in chamber summons produced a copy of the permission granted in favour of plaintiff No.1 in respect of area 10.5 mtrs. X 4.25 mtrs. and 7.60 mtrs. X 4.25 mtrs. up to height of 17 feet. The learned counsel appearing for plaintiff Nos.1 to 5 and plaintiff No.6 admitted before learned trial Judge that there was no separate permission in respect of the structures which were subject matter of notice issued against them including plaintiff No.6.

9. A perusal of the impugned order indicates that plaintiff Nos.2 to 6, however, made an attempt to argue before the learned trial Judge that even if they did not have any permission from the Municipal Corporation to construct their respective structures which were subject matter of notice, all such structures were in existence prior to 1960-61. A perusal of the said order indicates that though such plea was raised, none of plaintiff Nos.2 to 6 produced any document before learned trial Judge in support of their contention.

10. The learned counsel appearing for the appellant submits that even though there was no permission granted by the Municipal Corporation for construction of the suit structure, the appellant had produced certain documents before the learned trial Judge showing that the suit structure was in existence since 1960-61. It is submitted that since the structure of the appellant was not of temporary nature, the Municipal Corporation could not have issued notice under section 55 of the MRTTP Act and thereafter notice under section 488 of the MMC Act. He submits that having realized that all the plaintiffs could not have filed

common suit, plaintiff No.6 immediately applied for leave under order 23 rule 1(3) of C.P.C. for withdrawing of suit as far as plaintiff No.6 is concerned and for leave to file separate suit.

11. It is submitted by learned counsel that in any event since the noticed structure was not temporary structure, the Municipal Corporation could not have issued notice under section 488 of the MMC Act for demolishing or for implementing notice under section 55 of the MRTP Act. Learned counsel, however, does not dispute before this Court that there was no permission granted in favour of the appellant (original plaintiff No.6) to carry out construction.

12. In my view, in view of the fact that there was no permission granted by the Municipal Corporation in favour of plaintiff Nos.2 to 6 including present appellant, the learned trial Judge while granting ad-interim relief in favour of plaintiff No.1 vide order dated 31st May 2013, could not have granted any status-quo order in favour of plaintiff Nos.2 to 6. It is apparent that all the plaintiffs made a statement before the learned trial Judge that such a permission was obtained by all the plaintiffs. Relying upon the said statement, the learned trial Judge granted 10 days time to produce such permission before the learned trial Judge. The fact remains that from 31st May 2013 till the matter was heard by learned trial Judge on 18th November 2014, plaintiff Nos.2 to 6 including present appellant did not produce any such permission. Knowing fully well that there was no such permission granted in favour of plaintiff Nos.2 to 6 including present appellant, when the status-quo order

was passed by the learned trial Judge, plaintiff No.6 ought to have disclosed that no such permission was granted by the Municipal Corporation. In my view, it was the duty of appellant/ original plaintiff No.6 to bring this fact to the notice of learned trial Judge while granting ad-interim status-quo order on 31st May 2013. All the plaintiffs including present appellant continued to take advantage of the said ad-interim status-quo granted on 31st May 2013 till 18th November 2014 when defendant No.3 produced a copy of the permission which was granted only in respect of plaintiff No.1 and, that too, in respect of limited area which was not subject matter of notices issued under section 55 of the MRTTP Act and section 488 of the MMC Act.

13. In my view, the learned trial Judge was, thus, right in making an observation against plaintiff No.6 that a fraud was committed upon the Court by plaintiff No.6 by suppressing the fact that no such permission was granted by the Municipal Corporation in favour of plaintiff No.6 for carrying out construction of any such structure.

14. In so far as submission of learned counsel for the appellant that the Municipal Corporation ought to have given separate notice for demolition of suit structure and not the notice under section 488 of the MMC Act for implementation of notice issued under the MRTTP Act is concerned, it is not in dispute that all the plaintiffs including plaintiff No.6 had filed contempt notice of motion before the learned trial Judge *inter alia* claiming action against Municipal Corporation in view of Corporation making an attempt to demolish the suit structure without issuing fresh

notice. Though such plea was raised in the notice of motion, the learned trial Judge rejected the said notice of motion filed by the plaintiffs including plaintiff No.6 i.e. appellant herein. No further proceeding were filed by plaintiff No.6 after dismissal of contempt notice of motion by the learned trial Judge.

15. The Municipal Corporation, in these circumstances, issued notice under section 488 of the MMC Act for demolition of suit structure. In my view, the Corporation was justified in issuing the said notice under section 488 of the MMC Act for the purpose of demolition of the impugned structure which structure was temporary. According to the Municipal Corporation, under section 55 of the MRTP Act no such objection was raised by plaintiff No.6 before the learned trial Judge. Be that as it may, in my view, the notice issued by the Corporation under section 488 of the MMC Act for demolition of structure cannot be considered as faulty or contrary to the provisions of the MMC Act.

16. Since it is the case of the appellant himself that there was no document produced by the appellant showing the existence of the suit structure on the datum line, in my view, the learned trial Judge is right in rejecting ad-interim relief in favour of the appellant (original plaintiff No.6). 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. No order as to costs.

17. At this stage, learned counsel for the appellant seeks

continuation of ad-interim relief granted by this Court vide order dated 24th November 2014. The said prayer is opposed by learned counsel appearing for the respondents. Since this Court has have observed that the finding of trial court in respect of fraud committed by appellant appears to be correct, I am not inclined to continue the ad-interim order granted by this Court. The said prayer for continuation of ad-interim order is, accordingly, rejected.

(R.D. DHANUKA, J.)

Sanjay Nanoskar, P.S..