

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO.31592 OF 2015
WITH
CIVIL APPLICATION (ST.) NO.31595 OF 2015**

Sanjay Kumar Molai Yadav ... Appellant
vs.
Municipal Corporation of Greater Mumbai ... Respondent

Mr. Vikas Singh, for the Appellant.
Mr. S.K. Sonawane, for the Respondent-BMC.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **24th NOVEMBER, 2015**

P.C.:

. Not on board. Upon mentioning taken on board.

2. The learned counsel for the Appellant submits that a suit for declaration that the two notices dated 30th July, 2015 issued by the Corporation under Section 351 of M.M.C. Act and so also the order passed by the Designated Officer-III, K/East ward, Municipal Corporation of Greater Mumbai on 1st October, 2015 on demolition of the unauthorized construction of structure made with steel sheet

roofing admeasuring size 40 ft x 75 ft and height 9 ft situated at CTS No. 51, Village Vileparle, Sahar Road, Andheri(E), Mumbai is illegal, unjust and therefore the Respondent-Corporation be restrained from executing the said notices and the order.

3. The learned counsel for the Appellant has submitted that the Motion for interim relief vide L.C. Suit No. 2723 of 2015 is rejected by the learned Judge, City Civil Court, Dindoshi, Mumbai on 24th October, 2015. Therefore he has moved the present Appeal. He submitted that the ad-interim protection granted by the trial Court was continued by the said Court and this Court till today.

4. The learned counsel for the Corporation appeared and strongly opposed.

5. The learned counsel for the Appellant has submitted that the impugned notices are bad in law. The suit structures are in existence from the past more than 80 years is prior to 17th April, 1964. He relied on the licence issued by the Corporation in his favour in the year 1961-62 for keeping 12 buffalos and it was in the name of

Molai Jainandan Yadav where the address of the cattle is mentioned as “*Ballu's stable, No. 12, Koldongari Galli, Andheri*”. He submitted that the great grand father of the Appellant has entered into a registered sale deed in respect of two acres of land on 14th April, 1938 and on this land the suit structure is erected. He submitted that the order passed by the Designated Officer is illegal and is to be set aside.

6. The learned counsel for the Respondent-Corporation submits that there are two orders passed by the Designated Officer in respect of two notices. He submitted that the licence was granted to the Appellant in the year 1962 for keeping 12 buffaloes and it was issued only for keeping the cattle and it is not in respect of notice-structure. He submitted that notice-structure is unauthorized and not only that in fact that structure was demolished earlier. He submitted that the then counsel for the Appellant Mr. Divakar Dwivedi has issued a letter dated 2nd May, 2015 addressed to Assistant Municipal Commissioner and objected the illegal demolition of the residential premises. He submitted that the order passed by the trial Court of rejecting the ad-interim protection is correct.

7. Perused the documents produced by the learned counsel for the Appellant. So also the order of the trial Court and the orders passed by the Designated Officer. The title of the land of the Appellant is not disputed. So also the Appellant has received licence for keeping 12 cattle in the year 1962 is also not in dispute. The fact of unauthorized construction standing on the land as mentioned in the notices, is in dispute. The legal notice discloses earlier the structure being unauthorized was demolished. The documentary evidence to show that the Appellant is having such structure standing in the year 1961-62 which can be tolerated, is not brought on record. Whatever documents produced are not prior to the datum line. The Designated Officer in his order dated 1st October, 2015 in column 8 has specifically dealt with the document i.e. license for keeping cattle issued on 7th August, 1962 was for 12 buffalos.

8. After going through the documents and the license, therein the address of the place as "*Ballu's stable, No. 12, Koldongari Galli, Andheri*" is mentioned. However, the area of the structure/stable which is standing on the said land since 1961-62 is not specified. It is a common knowledge that whenever there are cattle,

some roof is to be provided to them. However, it is necessary to show the area of the stable which was provided at the relevant time if at all the licence is given. On the other hand, the Designated Officer has given a reasoned order after examining all the documents and has rejected the claim of the Appellant. The structure mentioned in the notice is authorized and standing prior to 1961-62 but the area is not mentioned. It may be a shed of 10' x 10' also. The learned counsel for the Corporation submitted that the learned counsel for the Appellant is not correct in arguing about the order of status-quo in respect of shed exists because such order of status quo was passed in the dispute between the brothers which will not come in the working of the Corporation to issue notices for the unauthorized construction. Thus, the order of status quo between the parties i.e. brothers of the Appellant and other family members is applicable *interse*.

9. The learned counsel for the Appellant in support of his submission has relied on the ratio laid down by the single judge in the case of “*Ramawatar Babulal Jajodia vs. Municipal Corporation of Greater Mumbai*”¹. However, the said ruling is not of the help of this

1. 2014(1) Mh.L.J.

Appellant because in that case the ratio is laid down in respect of the owner of the property when he treated it as an unauthorized occupier. In the said matter, the order was passed by the Corporation without giving liberty to the Appellant to file reply.

10. In the present case, the Designated Officer has considered all the documents which are produced by the Appellant and hence it can not be said that no opportunity of audience was given to the Appellant. Under such circumstances, the order passed by the learned Judge on 24th October, 2015 does not require any interference.

11. Hence, the Appeal from Order stands dismissed.

12. However, I take note that in the year 1961-62 there were 12 cattle and one stable was in existence. The 12 buffalo needs some protection and one stable of a temporary structure was in existence. Considering this, the Appellant may move to the Corporation for the construction of a temporary shed for the cattle. Therefore, the liberty is granted to the Appellant to apply immediately for construction off the stable and such application may be decided by the Corporation

within one month from filing of such application, without delay.

13. The prayer for stay made by the learned counsel of the Appellant is hereby rejected.

(MRS.MRIDULA BHATKAR, J.)