

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST.) NO. 31945 OF 2015
WITH
CIVIL APPLICATION (ST.) NO. 31946 OF 2015
IN
APPEAL FROM ORDER (ST.) NO. 31945 OF 2015

Smt.Aishabi Abdul Karim Bagwan

..... Appellant.

VERSUS

Commissioner,

Municipal Corporation of Greater Mumbai & Anr..... Respondents.

Mr.Pradeep Havnur a/w Sanjay Kharat & Ms.Radhika Samant for the Appellant.
Mr.J. Reis, Senior Advocate a/w Mr.A.V.Diwate & Mr.Dhananjay Deshmukh for
Respondent No.1-BMC.

CORAM : R.D. DHANUKA, J.

DATED : 01st DECEMBER, 2015.

P.C.

. By this Appeal from Order the Appellant seeks to impugn order dated 29th October, 2015 passed by the learned trial Judge dismissing the Notice of Motion filed by the Appellant by which the Appellant had prayed for an injunction to restrain the Corporation from acting upon a Show Cause Notice issued under Section 351 of the Mumbai Municipal Corporation Act and also the order dated 16th March, 2012 passed by the designated Authority and restraining the Corporation from demolishing the suit structures. After considering the documents and submissions made by the Appellant, the designated authority had passed an

order on 16th March, 2012.

2. It is not dispute that the Appellant herein was claiming through Mr.Shankar Ramanna Joganpalli before the learned trial Judge. The Appellant placed some of the documents which were relied upon by the said Mr.Shankar Ramanna Joganpalli and based on such documents it was contended that the said Mr.Shankar Ramanna Joganpalli was occupying the structure prior to the datum line of 1962.

3. Today by a separate order passed by this Court in Appeal from Order (St.) No.32097 of 2015 and Appeal from Order (St.) No.32100 of 2015, this Court after considering such documents which were relied upon by the Appellants herein has passed a detailed order dismissing those two Appeals from Order. This Court has already taken a prima facie view that the said Mr.Shankar Ramanna Joganpalli could not demonstrate that those structures were censused structures and were in existence prior to 1st January, 1995. The Appellant herein is claiming through Mr.Shankar Ramanna Joganpalli and is relied upon the same documents, in respect of his contentions that his structure was in existence prior to the cut of date or in any event prior to 1st January, 1995.

4. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the trial Judge has considered all these documents which

documents were of the period subsequent to the datum line of 1962 and has rendered a prima facie conclusion that these documents were not sufficient to prove existence of the suit structure prior to datum line. The Appellants claiming through the said Mr.Shankar Ramanna Joganpalli who could not establish his structure as censused structure and thus Appellant who is claiming through the Mr.Shankar Ramanna Joganpalli can not claim better rights than Mr.Shankar Ramanna Joganpalli.

5. A perusal of the plaint filed by the Appellant clearly indicates that it was the case of the Appellant that the Appellant should be granted rights under Article 300-A of the Constitution of India on the ground that if the structure prior to 1962 can be tolerated by the Government, why not the slum structures in existence prior to 1st January, 1995 can be tolerated and why structures in existence prior to 1962 can not be tolerated. In my view this argument of the Appellant is totally untenable. The fact remains that the Appellant could not prove before the learned trial Judge even prima facie that the structures of the Appellant was in existence prior to the cut of date.

6. In my view the appeal is devoid of merits and is accordingly dismissed. In view of the dismissal of the Appeal from Order, the Civil Application does not survive, hence disposed of accordingly.

7. The Central Railway is required to construct a foot over bridge on the land on which the structure is constructed which is for a public purpose. Various Public Interest Litigations for removal of unauthorized occupants from the said land are pending. This Court has already considered the orders passed by this Court in those Public Interest Litigations in the order passed in Appeal from Order (St.) No.32097 of 2015 and Appeal from Order (St.) No.32100 of 2015.

8. Oral application of the learned Counsel for the Appellant for continuation of the ad-interim protection is rejected.

[R.D. DHANUKA, J.]