

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 32097 OF 2015

WITH

CIVIL APPLICATION (ST.) NO.32098 OF 2015

IN

APPEAL FROM ORDER (ST.) NO. 32097 OF 2015

Mr.Shankar Ramanna Joganpalli & Ors.

..... Appellants.

VERSUS

The Commissioner & Anr.

..... Respondents.

AND

APPEAL FROM ORDER (ST.) NO. 32100 OF 2015

WITH

CIVIL APPLICATION (ST.) NO.32101 OF 2015

IN

APPEAL FROM ORDER (ST.) NO. 32100 OF 2015

Arun Shankar Joganpalli & Anr.

..... Appellants.

VERSUS

The Commissioner & Anr.

..... Respondents.

Appearances :

Ms.K.C. Nichani a/w Mr.Rajesh Poojary i/b M/s Mint & Confreres for the Appellants.
Mr. J. Reis, Senior Advocate a/w Mr.A.V.Diwate a/w Mr.Dhananjay Deshmukh for the Respondents-BMC.

CORAM : R.D. DHANUKA, J.

DATED : 01st DECEMBER, 2015.

P.C.

. Both these Appeal from Order arise from the orders passed by the learned trial Judge thereby dismissing the Notices of Motion filed by the Appellants by which the Appellants had applied for interim injunction against

the Municipal Corporation from taking any action in respect of notices issued under Section 351 of the Municipal Corporation Act and order passed by the designated Authority pursuant to such notices.

2. I have heard the learned Counsel appearing for both the parties at great length at the admission stage. There is no dispute between the parties that prior to filing of the Notice of Motion, which are the subject matter of these two appeals, the Appellants had already filed Notice of Motion on 22nd January, 2013, inter alia praying for interim injunction in respect of the same notices issued under Section 351 of the Municipal Corporation Act and also the orders by the designated Authority. The said Notice of Motion was resisted by the Municipal Corporation. It is not dispute that the said Notice of Motion filed by the Appellants were dismissed by the trial Judge by rendering reasons. The Appellants herein had challenged the said order by filing two Appeals from Order. These Appeal from Order were dismissed by this Court. It is not in dispute that there was no Special Leave Petition filed by the Appellants against the order of this Court in the said Appeals from Order.

3. The Appellants herein however filed a Writ Petition in this Court alleging that the structures which were subject matter of the Notices of Motion under Section 351 of the Mumbai Municipal Corporation Act were censused

structures and sought protection in respect of the suit property. Initially this Court had granted ad-interim protection in the said Writ Petition. The Municipal Corporation however opposed the Writ Petition filed by the Appellants on the ground that the earlier Notice of Motion and the Appeal from Order filed by the Appellants were already dismissed and the Orders passed by the City Civil Court had attained finality. This Court allowed the Appellants to withdraw the said Petition and granted liberty to file appropriate proceedings. It was made clear that this Court had not expressed any views in respect of merits of the matter and such application filed by the Appellants, shall be considered on its own merits. The Appellants thereafter filed two separate Notice of Motions in two separate suits and applied for injunction once again for the same reliefs.

4. The learned Counsel appearing for the Appellant invited my attention to some of the documents annexed to the appeal Paper-book in support of the submissions that the earlier Notices of Motion were filed on the premise that the structures in question were in existence prior to 1st January, 1964, whereas the second Notices of Motion were filed on the premise that the structures were censused structures and thus under the Circular issued by the State Government the censused structures which were in existence on 1st January, 1995 were eligible for protection and could not be demolished

without providing alternate premises to the Appellants.

5. The learned Counsel for the Appellants submits that though several documents were relied upon by the Appellants, the trial Judge has simply brushed aside those documents and recorded erroneous prima facie finding that the Appellants had not proved the fact that the structures in existence were censused structure. She submits that the reasons recorded by the learned trial Judge that the photo-pass relied upon by the Appellants could not be considered on the ground that there was no number of the structures on these photo-passes. She submits that even in the Notices issued by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act no such number of structures was mentioned. She submits that the Appellants have been carrying a business in the said suit structure since prior to 1995 and the fact that the structures were censused structures were proved by the Appellants by producing authorized photo-pass issued by the Authority. She submits that though, the photo-passes were issued in the year 2000, it would indicate that the structures were in existence as on 1st January, 1995.

6. The learned Counsel submits that though the Appellants had made out a case for grant of injunction, the learned trial Judge has rejected the

Notice of Motion. She submits that on the one hand the learned trial Judge has referred the documents which were relied upon by the Appellants in the earlier Notice of Motion and on the other hand has held that those documents cannot be looked into for the purpose of deciding the second Notice of Motion on the ground that the Appeal from Order against the said order passed in the first Notice of Motion was dismissed and the order passed in the first Notice of Motion had attained finality. The learned trial Judge has compared the documents relied upon by the Appellants in the first Notice of Motion with the documents relied upon in the second Notice of Motion to arrive at a prima facie conclusion that the numbers on photo-pass did not tally with the other documents.

7. The learned Counsel also placed reliance on the consent terms filed between the Appellants and M/s Godrej Limited and submits that the said consent terms which was prior to the 1st January, 1995 also clearly indicated that the Appellants were in possession of the suit structures prior to 1st January, 1995.

8. It is submitted by the learned Counsel for the Appellants that the Appellants had applied for the survey under the provisions of Maharashtra Land Revenue Act read with Urban Land Ceiling Act. The City Survey Office

had carried out the survey of plots in question and had found the structures of the Appellants in existence prior to the cut off date.

9. The learned Senior Counsel for the respondent on the other hand strongly raised objection about the conduct of the Appellants in filing second Notice of Motion and in filing a Writ Petition. Though the earlier Notice of Motion for the same reasons came to be rejected by the learned trial Judge and Appeals from Order arises from the said order were rejected by this Court. He submits that no Writ Petition could be filed against the order passed in Appeal from order. The learned Senior Counsel invited my attention to the averments made in the plaint and in particular paragraph 100 in which it was clearly averred by the Appellants that the suit premises was not declared as a slum. He submits that the second Notice of Motion thus filed by the Appellant contending that the suit structures was censused as on 1st January, 1995 was contrary to their own pleadings in the plaint. He submits that the learned trial Judge has considered each and every documents relied upon by the Appellants and has rightly come to a prima facie conclusion that the Appellants had failed to prove the allegation that the suit structures were censused structures as on 1st January, 1995. He submits that the learned trial Judge has rightly come to the conclusion that documents produced by the Appellants did not disclose any number and on the strength of such documents the Appellants could not

demonstrate that the documents were in respect of the structures which were subject matter of the notices issued under Section 351 of the Municipal Corporation Act.

10. The learned Senior Counsel also invited my attention to the orders passed by this Court in the Public Interest Litigation No.19 of 2011 and 04 of 2011 and also to the orders passed by this Court on 8th July, 2015 in Public Interest Litigation No.12 of 2015. He submits that the impugned structures are on the plot adjoining to the Vikhroli Railway Station, which plot was required to be used by the Central Railway for the purpose of constructing a Foot Over Bridge. He submits that the Division Bench of this Court passed an order dated 14th October, 2012 in Public Interest Litigation No.19 of 2011 to which the Appellants were party respondents has considered the documents which were relied upon by the Appellants before the learned trial Judge and has disbelieved the case of the Appellants. Special Leave Petition filed by the Appellants herein is dismissed.

11. In so far as the order dated 29th November, 2012 passed by the Division Bench of this Court in Public Interest Litigation No.04 of 2011 is concerned, the Division Bench has directed the Municipal Corporation to file affidavit in all the pending Notice of Motion in Suits pertaining to the 45

unauthorized structures and has directed that the suits be disposed of expeditiously.

12. A perusal of record shows that, it is not dispute that the earlier Notice of Motion filed by the Appellants praying for injunction in respect of notice issued under Section 351 of the Municipal Corporation Act and the orders passed by the designated Authority came to be dismissed by the learned trial Judge. The Appeal from Order against the said order filed by the Appellants in this Court earlier came to be dismissed. The Appellants did not file any Special Leave Petition against the said order. Instead of filing Special Leave Petition, the Appellants filed a Writ Petition in this Court contending that the suit structures were censused structures. The said Writ Petition was withdrawn. In my view, at the first instance the said Notice of Motion filed for the same reliefs itself could not have entertained by the learned trial Judge. Be that as it may, the Appellants could not demonstrate even on the basis of additional documents relied upon before the learned trial Judge that the suit structures were censused structures as on 1st January, 1995. With the assistance of the learned Counsel appearing for both the parties, I have perused several documents brought to my notice by the learned Counsel and also the impugned order passed by the learned trial Judge.

13. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has dealt with each and every documents relied upon by the Appellants in the detailed impugned order. The learned trial Judge has rejected the plea of the Appellants on the ground that in none of the documents produced by the Appellants the number of the suit structure claimed to be owned by the Appellants was mentioned. The learned trial Judge has also considered the photo-passes relied upon by the Appellants and has rightly rejected these documents on the ground that none of the photo-passes would indicate that the structures were censused structures prior to 1st January, 1995.

14. A perusal of the averments made in paragraph 100 of the plaint would clearly indicate that it was the case of the Appellants, that the suit structure/suit property was not declared as a slum. The submission of the Appellants in my view before the learned trial Judge in the second Notice of Motion that the suit structures were censused structures was contrary to their own averments made in the plaint. Be that as it may the learned trial Judge has in my view has passed the detailed order and dealt with documents and has rightly come to the prima facie conclusion that the Appellants had failed to prove that the said structures were censused structures.

15. It is not in dispute that the Central Railway require the entire plot for the purpose of constructing a Foot Over Bridge, outside Vikhroli Railway Station, which is a public project. Several Public Interest Litigations have been filed in this Court for the purpose of removal of unauthorized occupants from the land in question.

16. This Court has already considered such documents relied upon by the Appellants before trial Court in second Notice of Motion, in the said order dated 14th October, 2011 in Public Interest Litigation No.19 of 2011. It is not in dispute that the Special Leave Petition filed by the Appellants against the said order dated 14th October, 2011 is rejected. In my view there is no infirmity in the order passed by the learned trial Judge in both these orders which are subject matter of these two Appeals from Order. Both these appeals are devoid of merits and are accordingly dismissed. In view of the dismissal of these two Appeals from Order, the Civil Applications do not survive and are also dismissed.

17. Learned Counsel for the Appellants prays for continuation of the ad-interim protection. In view of the fact that the second Notice of Motion, in my view was thoroughly misconceived and the fact that the plot on which

structures constructed in question are required for public purpose, I am not inclined to continue the said ad-interim protection. Oral application of the learned Counsel is rejected. Parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]