

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.95 OF 2015
IN
APPEAL FROM ORDER NO.80 OF 2015

Shri Lalji Narayan Patel ... Appellant
Vs.
The Mumbai Municipal Corporation ... Respondent

Ms. Pinky Jain, Adv. i/b. Anand O Singh, Adv. for appellant.
A V Diwate, Adv. for respondent No.1 for BMC.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 7th September, 2015.

P.C. :

1. Not on board. Upon production by the appellant, taken on board.

2. Rule. Returnable forthwith.

3. The appellant has challenged the impugned order of Bombay City Civil Court dated 17th November, 2014 rejecting the appellant's Notice of Motion. The Notice of Motion was for protection of the suit structure impugned in the MMC notice dated 22nd April, 2013. The notice is in respect of a structure with ground plus one upper floor. The appellant states that there is no upper floor. Counsel on behalf of appellant, therefore, agrees that the appellant would not be concerned with any demolition of any upper floor in the structure. The appellant has not produced the photographs of the suit structure. The appellant contends that all the structures along with

the appellant's structure which are many in number are ground floor structures. The appellant, therefore, seeks to protect his ground floor structure.

4. It is the appellant's case that his structure is in existence since 1960. It is not understood how such a case is made out. There is absolutely no substantiation of that statement even prima facie.

5. The appellant claims to have applied to the municipality for the sanctioned plan. The structure of the ground floor described in the notice is seen to be a single structure otherwise wholly unauthorised and finding out a plan from municipal office is like finding a needle in a haystack. Counsel on behalf of the appellant states that the appellant applies for the plan months after the impugned order was passed. Hence there is neither any statement to show prima facie the existence of the structure from 1960, as is the case of the appellant, nor any effort to show any such prima facie case.

6. The appellant claims to have been carrying on business in the suit structure since 1989. Even that statement is not at all substantiated. The appellant has relied upon several documents. The documents are from the year 2001 onwards. These are shops and establishment licenses of 2009, a rent receipt of 2001, electricity bill of 2013 and agreement for permanent alternate accommodation of 2011.

7. Hence the prima facie evidence produced by the appellant would show the existence of the structure at best from and after 2001.

8. The appellant has relied upon one NA order dated 31st May, 1996 which is not in respect of the suit structure but in respect of certain land on survey no.53 part. The agricultural land is sought to be converted to the non agricultural use being 'commercial'. Such a document would not show that suit structure is used for that purpose.

9. The appellant claims that the appellant has applied for regularization of the suit structure and in case the suit structure is seen to be in existence in 1995, it would have to be protected under the government policy. The government policy is not produced. It is not shown how it would apply to the suit structure. Counsel on behalf of the appellant states that application has been made in the last week which is well after this appeal is filed and ad interim order of injunction has been obtained. The regularization application may be considered on merits independently of this litigation.

10. The learned judge in the impugned order, therefore, would have to consider only the aforesaid documents produced by the appellant and nothing else. The learned Judge would not be able to consider either the regularization application or the application for obtaining the plan, if any, of the suit structure. These applications and the necessary documents, if obtained, would, therefore, be considered in the suit and could not have been considered in the impugned order.

11. The impugned order for Gala No.45 considers the appellant's case as also the reply of the MMC. It shows how due legal process has been followed as held in the case of **Sopan Maruti Thopte**. The order is correct. The appeal is dismissed.

12. Appeal from Order as also the Civil Application are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.