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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

**CIVIL REVISION APPLICATION NO. 848 OF 2013**

Kalyan Dombivli Municipal Corporation and anr. .. Applicants

Vs.

Shri Sanjay Rajendra Prasad Singh .. Respondent

Mr.A.S.Rao, Advocate for the Applicants.

Mr.Bhushan Walimbe i/b Ms.Preeti Walimbe, Advocate for Respondent.

**CORAM : R.G.KETKAR, J.**

**DATED : 15<sup>th</sup> DECEMBER, 2015**

**P.C. :**

1. Heard Mr.A.S.Rao, learned Counsel for the applicants and Mr.Bhushan Walimbe, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants have challenged the judgment and order dated 31/08/2013 passed by the learned II nd Joint Civil Judge, Junior Division, Kalyan below Exhibit 27 in Regular Civil Suit No. 680 of 2012. By that order, the learned trial Judge held that Civil Court has jurisdiction to entertain and try the Suit.

3. In the present case, defendants No. 1 & 2 had issued notice dated 14/03/2012 under Section 260 of the Maharashtra

Municipal Corporations Act (for short 'Act'). On 23/03/2012, Section 433A is added by Maharashtra 2 of 2012. Defendants No. 1 & 2 thereafter issued notice dated 13/04/2012 under Section 478 of the Act.

4. The respondent, hereinafter referred to as plaintiff, instituted Suit on or about 16/04/2012 inter alia for declaration that the notice dated 13/04/2012 passed by the defendants is baseless, illegal and void, ad-initio as it is outside the scope and outside the competence of the defendants and issued without proper finding as to illegality of construction; for declaration that proceedings adopted by the defendants in issuing notice are illegal and without application of mind and wrongful exercise of jurisdiction which is not vested in them and consequently, order is void and illegal; for perpetual injunction restraining the defendants from proceeding or from taking any action in pursuance of notice dated 13/04/2012 and interfering in the rights of the plaintiff in any way on the basis of the said order.

5. It is the case of the plaintiff that he had obtained permission on 03/04/1970 for construction and further temporary building permission on 28/09/1973 from Domibivali Municipal Council (for short 'Council'). In pursuance of that permission, he carried out the construction of chawl consisting of small shops. The construction was carried out with due permission. It is contended

that earlier he had instituted Regular Civil Suit No. 143 of 2000 and the Suit was decreed on 30/01/2006. It was declared that action of the defendant- Corporation in widening road affecting the suit property is without acquisition and without following due process of law. The learned trial Judge issued injunction restraining the defendant – Corporation from encroaching upon the suit property or acquiring it for road widening unless Corporation acquires the affected portion of the suit property in road widening by following due process of law. It is not in dispute that the said decree was not challenged and has attained finality.

6. The plaintiff further alleged that the defendants completed road widening and construction of guttar and also constructed footpath. The work of road widening is over. The shed is already demolished in the year 1995. The defendants intend to demolish the entire structure on the ground that the same is illegal. The plaintiff, in substance, contends that the notice dated 14/03/2012 under Section 260 and 13/04/2012 under Section 478 are without any authority of law as construction carried out by the plaintiff is after obtaining permission from the Council.

7. During the pendency of the Suit, plaintiff took out application for temporary injunction. That was allowed on 05/05/2012. Aggrieved by that decision, defendants preferred Misc. Civil Appeal No. 49 of 2012. The Appeal was allowed on

14/12/2012 and the learned District Judge remitted the matter to the trial Court to decide the issue regarding jurisdiction as a preliminary issue. The learned District Judge directed the parties to maintain status-quo till the application is filed by the defendants before the trial Court. In pursuance of that liberty, defendants filed application for deciding preliminary issue and because of order directing the parties to maintain status-quo till application is filed by the defendants, defendants demolished the shed of the plaintiff. As per order of the learned District Judge, the learned trial Judge ultimately, by the impugned order held that the Civil Court has jurisdiction to entertain and try the Suit. It is against this order, defendants have instituted present Civil Revision Application.

8. Mr.Rao strenuously contended that plaintiff had obtained temporary building permission on 28/09/1973 from Council. Perusal of the conditions and in particular, conditions No. 1 and 5 thereof clearly shows that plaintiff was permitted to carry out temporary construction and not permanent construction by using lime and cement. The permission was only for one year which was to expire on 31/03/1974 and thereafter, for every year, the plaintiff had to obtain permission. He submitted that plaintiff has not brought any material on record to indicate that the permission for carrying out temporary construction on 28/09/1973 is renewed from time to time. In short, he submitted that after expiry of one year as

the plaintiff did not obtain yearly renewal, construction carried out in pursuance of permission dated 28/09/1973 has to be treated as illegal. He further submitted that Section 433A was added on 23/03/2012. Section 433A lays down that any notice issued, order passed or direction issued by the Designated Officer under Sections 260, 261, 264, 267 or 478 shall not be questioned in any Suit or other legal proceedings. In view thereof, the jurisdiction of the Civil Court is expressly ousted. He further submitted that perusal of the notice dated 14/03/2012 shows that the said notice gave all the necessary details and called upon the plaintiff to produce permission with which the said construction was carried out. After considering the reply as also document, notice under Section 478 was issued on 13/04/2012. He has invited my attention to the Schedule given in notice dated 14/03/2012 and submitted that all the necessary details have been set out in that notice.

9. On the other hand, Mr.Walimbe supported the impugned order. He submitted that the plaintiff had carried out construction as per permission accorded by the Council in the year 1970 and 1973. Notice does not indicate that it relates to construction carried out in pursuance of permission granted in 1970 or temporary construction carried out in pursuance of permission granted in 1973. In short, he submitted that the notice issued under Section 260 is absolutely vague. He further submitted that reliance placed on Section 433A is

wholly misconceived as the said Section was added with effect from 23/03/2012 and notice under Section 260 is issued on 14/03/2012. The subsequent notice dated 13/04/2012 under Section 478 is purely consequential. He, therefore, submitted that no interference is called for.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge has held that the Civil Court has jurisdiction to entertain and try the Suit. In paragraph 15, the learned trial Judge noted that the Suit structure was erected after obtaining permission from the Council. Consequently, Sections 253 and 254 are not applicable. If that be so, Section 260 also will not be applicable. Section 478 contemplates work or thing done without written permission of the appropriate authority shall be deemed to be unauthorized. As the plaintiff carried out construction after obtaining permission from the Council even Section 478 has no application.

11. In the case of *the Commissioner, Akola Municipal Corporation Vs. Bhalchandra Govind Mahashabde*, **2013 (5) ALL MR 190**, the learned Single Judge of this Court observed in paragraphs 7 & 10 as under :

7. Now, Section 433A of the Maharashtra Municipal Corporations Act creating a bar of jurisdiction of the Civil Court, being relevant, is reproduced below :

"433A. Bar of jurisdiction - Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer,

under sections 260, 261, 264, 267 or 478 shall not be questioned in any suit or other legal proceedings."

Undoubtedly, if the plaintiff comes before the Civil Court alleging that a notice issued under Section 260 of the said Act is illegal in any manner and seeks a declaration to that effect, then the bar of jurisdiction to try such a suit under Section 433A of the said Act shall operate. However, nonetheless, the inherent jurisdiction of a Civil Court in a suit challenging the notice under Section 260 of the said Act, on the limited grounds, viz. that the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act have not been complied with, or that the Authority issuing such a notice has not acted in conformity with the fundamental judicial procedure, or that it is an abuse of exercise of power, or that the offending act has not been done in good faith, remains intact, in view of the aforestated law laid down in judicial pronouncement. The Civil Court is not precluded of its inherent jurisdiction to entertain and decide such challenge to a notice under Section 260 of the said Act, on such limited grounds, particularly when there is no forum available under the said Act to ventilate such grievances in respect of it. Hence, the question of law at Serial No.(i) is answered accordingly.

10.A plea of bar to jurisdiction of the Civil Court to entertain and decide the challenge to a notice under Section 260 of the said Act on the limited grounds, has to be considered having regard to the contentions raised in the plaint, the averments disclosing the cause of action, and the reliefs sought for therein. All such averments must be considered as a whole and not in isolation. The plaint must contain all such statements of material facts, as are necessary to invest such jurisdiction with the Civil Court. The statements of facts must be very clear and specific and not vague. The absence of a single material fact of jurisdiction, would entail the consequences of dismissal of suit, as barred by Section 433A of the said Act.

12. In paragraph 11 of that report, the averments made in paragraph 6 that the notice is absolutely vague was noted. After considering the averments in the plaint, in paragraph 13, it was observed that perusal/reading of the notice also makes the averment that notice is absolutely vague as futile and illusory. The said decision was quoted with approval by the Division Bench of this Court (Coram: S.C.Dharmadhikari & G.S.Patel JJ.) in the case of

*Abdul Karim Ahmed Mansoori Vs. The Municipal Corporation of Greater Mumbai* in **Writ Petition (L) No. 2237 of 2013 decided on 13/09/2013.**

13. After considering the material on record, and in particular, permission dated 03/04/1970 and permission dated 28/09/1973, I do not find that the learned trial Judge has committed any error. Perusal of permission dated 28/09/1973 clearly shows that plaintiff had obtained permission bearing No. 781 on 03/04/1970. In fact, this is also recorded in permission dated 29/02/1995 granted by the defendant- Corporation for carrying out temporary repairs. In item No. 2 of reference, permission granted on 03/04/1970 is specifically referred and in item No. 3, temporary building permission dated 28/09/1973 is referred. In other words, 1995 itself, Corporation was aware that plaintiff has obtained permission in 1970 and 1973. Perusal of notice dated 14/03/2012, prima facie, shows that it is vague and the said notice does not clarify whether it relates to the construction carried out in pursuance of permission dated 03/04/1970 or construction carried out in pursuance of permission dated 28/09/1973. For the reasons recorded in paragraphs 15 & 16, as also, prima facie, I find that notice dated 14/03/2012 issued under Section 260 is vague, I do not find that the learned trial Judge has committed any error in passing the impugned order and holding that the Civil Court has necessary

jurisdiction to entertain and try the Suit.

14. Hence, Application fails and the same is rejected.

15. At this stage, Mr.Rao orally prays for continuation of status-quo maintained by both the parties for a period of 4 weeks from today.

16. In view thereof, notwithstanding rejection of the Civil Revision Application, parties shall maintain status-quo for a period of 4 weeks from today. Order accordingly.

**(R.G.KETKAR, J.)**