

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST.) NO.370 OF 2016
along with
CIVIL APPLICATION (ST.) NO.373 OF 2016
in
APPEAL FROM ORDER (ST.) NO.370 OF 2016**

M/s.Mint Street Estate Pvt. Ltd. .. Appellant/Applicant
Vs.
The Municipal Corporation of
Greater Mumbai .. Respondent

Mr.R.A. Thorat, Senior Advocate i/by Mr.Bholaprasad Shukla for the
appellant/applicant.
Mr.A.V.Diwate for the respondent-MMC.

CORAM : R.D. DHANUKA, J.
DATE : 28th January 2016

P.C.

. By this appeal from order, the appellant seeks to impugn the order dated 7th November 2015 dismissing the notice of motion filed by the appellant (original plaintiff) by which, the appellant had applied for injunction against the Municipal Corporation for demolition of a suit structure pursuant to the notice dated 1st September 2015 issued under Section 354-A of the Mumbai Municipal Corporation Act, 1888 and the order dated 4th September 2015 passed by the Designated Officer of the Municipal Corporation.

2. It was the case of the Municipal Corporation that the Corporation noticed unauthorised construction on the site when one of its officers visited the suit site and accordingly submitted inspection report and had taken photographs of on going construction. Based on

such inspection report and photographs taken on the site, a notice under Section 354-A of the Mumbai Municipal Corporation Act, 1888 (MMC Act) came to be issued on 1st September 2015. In the said notice, it was alleged that the appellant was carrying out vertical extension of existing building. In response to the said notice, the appellant gave a reply. It was the case of the appellant that no such unauthorised construction activities as alleged in the notice were going on on the suit site. The appellant also disputed the validity of notice under Section 354-A of the MMC Act and the order passed by the Designated Officer of the Municipal Corporation rejecting the contention raised by the appellant and directing demolition of unauthorised portion. The appellant challenged the said notice issued under Section 354-A of the MMC Act and the order passed by the Designated Officer before the City Civil Court and applied for injunction by filing a notice of motion. Municipal Corporation filed affidavit-in-reply before the learned trial Judge and annexed copies of various documents and photographs in support of their submission that the vertical extension carried out by the appellant was illegal and was without obtaining prior permission from the Municipal Corporation. The learned trial Judge, after considering the documents produced by both the parties, has dismissed the notice of motion.

3. Mr.Thorat, learned senior counsel appearing for the appellant (original plaintiff) invited my attention to the Deed of Conveyance dated 7th September 2007 by which the appellant had acquired the property. He submits that the appellant was carrying out tenantable repairs which were permissible under Section 342 of the MMC Act for which no permission of the Municipal Corporation was required.

It is submitted that the notice issued under Section 354-A of the MMC Act, being vague and without indicating the exact size of the vertical extension carried out by the appellant, the learned trial Judge ought to have granted injunction in favour of the appellant.

4. Mr. Diwate, learned counsel for the Municipal Corporation, on the other hand, invited my attention to the application made by the appellant for carrying out repairs and the letter addressed by the Municipal Corporation clarifying that since the appellant had proposed to carry out tenantable repairs, no permission of the Municipal Corporation under Section 342 of the MMC Act was required. In the said letter, it was also mentioned that if any work beyond the tenantable repairs was proposed to be carried out by the appellant, appropriate permission from the Municipal Corporation shall be taken before carrying on such construction activities.

5. My attention is also invited to the inspection report submitted by one of the Officers who had visited the site and had taken photographs. He submits that on comparison of the photographs annexed to the plaint by the plaintiff and the photographs taken by the Municipal Corporation would clearly indicate that the plaintiff had carried out vertical extension of the suit structure. He submits that the learned trial Judge has considered all these documents produced by the parties and rightly rejected the notice of motion.

6. It is submitted by the learned counsel for the Municipal Corporation that the appellant did not produce any sanctioned plan before the Designated Officer and also before the learned trial Judge to

indicate that the exact height of the building which was originally constructed by the appellant or predecessor of the appellant. He submits that in view of the order passed by the learned trial Judge, Municipal Corporation has already demolished the building substantially.

7. In rejoinder, Mr.Thorat, learned senior counsel appearing for the appellant submits that since the building is partly demolished by the Municipal Corporation and the manner in which the building is demolished, the appellant (original plaintiff) is not in a position to use the balance portion without carrying out appropriate construction, the appellant may be permitted to reconstruct the portion demolished on the undertaking that if the appellant fails to prove his case before the City Civil Court in the pending the suit, the appellant would demolish the said structure. Learned counsel appearing for the Municipal Corporation is not agreeable to this suggestion of the learned senior counsel for the appellant.

8. A perusal of the record, prima facie, indicates that one of the officers of the Municipal Corporation who visited the site had submitted the inspection report and found that the construction was going on when he visited the suit site. Learned Officer also had taken the photographs of the on going construction and based on such report, Municipal Corporation has issued a notice under Section 354-A of the MMC Act.

9. A perusal of the reply given by the plaintiff in response to the notice under Section 354-A does not indicate that it was the case of the plaintiff that the alleged vertical extension mentioned in the notice

was already in existence and was part of the ownership property of the plaintiff conveyed to the plaintiff under the said Deed of Conveyance. It was not the case of the plaintiff that after execution of the conveyance, the plaintiff had carried out further construction after obtaining permission from the Municipal Corporation.

10. A perusal of the photographs relied upon by the plaintiff and by the Municipal Corporation, both forming part of the record before the learned trial Judge, would also prima facie indicate that there was some vertical extension of existing structure which was the subject matter of notice issued under Section 354-A of the MMC Act.

11. None of the parties has produced any copy of the sanctioned plan of the then existing building to demonstrate the existing height of the suit building when the notice under Section 354-A was issued by the Municipal Corporation. In this situation, in my view, the learned trial Judge was justified in dismissing the notice of motion filed by the plaintiff. It is made clear that if the appellant is able to demonstrate before the learned trial Judge at the stage of trial that there was no unauthorised construction carried out by the plaintiff and construction of the building which was noticed by the Municipal Corporation at the stage of issuance of notice under Section 354-A of the MMC Act and was already constructed after obtaining permission of the Municipal Corporation, he can apply for reconstruction of the suit structure.

12. In my view, appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed.

13. It is made clear that the observations made by the learned trial Judge as well as this Court are prima facie. Learned trial Judge shall decide the suit on its own merits and without being influenced by the observations made by the learned trial Judge and by this Court.

14. At this stage, it is submitted by Mr.Thorat, learned senior counsel for the appellant that Municipal Corporation shall be restrained from demolishing the balance portion of the impugned structure whereas, it is the case of the Municipal Corporation that the remaining impugned structure is in dangerous condition and is required to be demolished. I am thus not inclined to accept the request of the learned senior counsel for the appellant not to demolish the impugned structure. It is made clear that if the trial Court comes to a conclusion at any stage that the area of construction demolished by the Municipal Corporation was already sanctioned by the Municipal Corporation or the construction was authorised, the learned trial Judge can consider an application of the appellant for restoration of the construction to that extent on its own merits.

R.D. DHANUKA, J.