

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

***APPEAL FROM ORDER (ST) NO. 7829 OF 2016
WITH
CIVIL APPLICATION (ST) NO. 7830 OF 2016***

Mr. Indra Bahadur Singh,
G-22, Abbhas Bldg., (Back Side),
35, Mere Weather Road,
Colaba, Mumbai – 400 001.

... Appellant/
Applicant.

v/s

The Asstt. Municipal Commissioner,
Mumbai Municipal Corporation, Mumbai,
and others.

... Respondents

Mr. V.S. Kapse for the appellant/applicant.

Mr. A.V. Diwate along with S.K. Sonawane for Resp. Nos. 1 and 2.

Mr. Amit Lulla for Resp. No. 3.

CORAM: N.M. JAMDAR, J.

DATED : 15 MARCH 2016

P.C.:

The Appellant challenges the order passed by the City Civil Court, Mumbai, on 11 March 2016, rejecting the draft notice of motion tendered below Exh.7.

2 A notice was issued to the Appellant by the Municipal Corporation on 12 May 2014 under Section 354-A of the Mumbai

Municipal Corporation Act, and proceedings therein taken out in respect of unauthorized construction, stated to be carried out by the Appellant.

3 The Appellant filed a suit bearing No.1489 of 2014 challenging the action of the Respondent Corporation. Notice of Motion No.1881 of 2014 was taken out which was rejected by the City Civil Court, by order dated 7 November 2015. The Appellant filed Appeal from Order (St.) No.34626 of 2015 which was disposed of by this Court on 29 February 2016. After the appeal was dismissed, the Appellant filed an affidavit stating that the Appellant will remove the first floor and his possession on the ground floor be retained. This having been rejected, the present appeal is filed.

4 Learned counsel for the Appellant submitted that the City Civil Court has wrongly held that the affidavit filed by the Appellant cannot be considered in view of the decision in the appeal filed earlier. He submitted that the Appellant be permitted to retain the use of the premises to the old structure admeasuring 180 sq. ft. on the ground floor. This submission cannot be accepted in view of the observations made in Appeal from Order (St.) No.34626 of 2015 which are reproduced as under :

'7. Perused the notice given by the Corporation on 19.5.2014 so also the application made by plaintiff No.2 dated 30.12.2013 for tenantable repairs and the reply given

by the Corporation i.e., Assistant Engineer (B&F) A Ward, on 9.1.2014. Perused the photographs. It appears from the record that there was one old structure admeasuring 150 sq.ft. with mud wall. However, the plaintiff No.1 purchased this from plaintiff No.2 by agreement dated 5.10.2013 for Rs.6 lacs and thereafter, he informed the Corporation by letter dated 30.12.2013 that he wanted to carry out repairs, however, the said request was rejected. It was necessary for the appellant to take necessary permission from the Executive Engineer (Building Proposal) (City), E Ward, which is not taken. Despite the requisite permission, the appellant has carried out construction. The photographs disclose that he had demolished the room completely and constructed a new room altogether having one upper floor and staircase to go to the first floor room. This cannot be considered as a tenantable repair. The notice issued under section 354A, in my view, is correct and the order passed by the learned Judge of the City Civil Court, Mumbai cannot be faulted with. I, therefore, maintain the said order. If at all, the appellant wants to give any undertaking, he is directed to approach the trial Court for necessary orders. Appeal and the Civil Application are accordingly dismissed.'

5 This Court has observed that the Appellant had demolished the structure and reconstructed a new room altogether having one upper floor and staircase to go to the first floor without any permission. Therefore, the activity carried out by the Appellant is in violation of the law. The Appellant has not taken any permission whatsoever for reconstruction of the property. Having violated the law, the Appellant cannot now be heard to say that he may be permitted to retain the structure or retain the ground floor of it. In view of the earlier order passed, the Appellant will have to abide by the notice given by the Municipal Corporation which calls upon the

Appellant to pull down the structure mentioned in the notice, failing which it will be removed by the Municipal Corporation. Learned counsel for the Appellant submitted that the Corporation may not permit the Appellant to apply for reconstruction even if the structure is pulled down pursuant to the notice. The apprehension is entirely unwarranted. If the Appellant follows the law, abides by the notice, can apply for appropriate permission to the Municipal Corporation for reconstruction, like it is open to any citizen.

6 In the circumstances, no equitable relief can be extended in favour of the Appellant.

7 The appeal is accordingly dismissed.

8 In view of dismissal of the appeal, the civil application does not survive and is dismissed.

(N. M. JAMDAR, J.)