

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

APPEAL FROM ORDER NO.339 OF 2016

ALONGWITH

CIVIL APPLICATION NO.440 OF 2016

IN

APPEAL FROM ORDER NO.339 OF 2016

Mr. Kishore Brijmohan Mishra .. Appellant/Applicant
Versus

Municipal Corporation of Greater Bombay .. Respondent

Mr. O. R. Tiwari for the Appellant/Applicant.

Mrs. M. R. Bhoir for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 23rd JUNE 2016

PC.

1. The above Appeal from Order challenges the order dated 18.03.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Notice of Motion filed by the Appellant came to be dismissed.

2. The Appellant is the original Plaintiff who has filed the suit in question being LC Suit No.1312 of 2014. The Plaintiff was issued a notice under Section 351 of the Mumbai Municipal Corporation Act ("MMC Act")

for short) alleging that he had carried out unauthorized construction of commercial structure (Medical Stores) with B.M. walls and A.C. roof top of admeasuring 9 ft. X 14 ft. (height 8 ft.). The said notice was replied to on behalf of the Plaintiff vide his Advocate's reply dated 09.05.2014. The Designated Officer of the Municipal Corporation Greater Mumbai ("MCGM" for short) considered the said reply and rejected the case of the Plaintiff and made the notice absolute and directed the Plaintiff to remove the structure in question, failing which the consequences were mentioned in the said notice. This resulted in the Plaintiff filing the instant suit being LC Suit No.1312 of 2014. The said suit has been filed principally for the relief of a declaration that the notice issued under Section 351 of the MMC Act dated 05.05.2014 and the order dated 04.06.2014 passed thereon by the MCGM is illegal, bad in law, null and void etc. In the said suit, the Plaintiff filed an application for temporary injunction being Notice of Motion No.1384 of 2014. The said Notice of Motion was moved for ad-interim reliefs before the Trial Court i.e. the Learned Judge of the City Civil Court, Mumbai, which ad-interim reliefs came to be rejected and the said Notice of Motion has thereafter been taken up for hearing and the impugned order passed therein. In pursuit of the relief of temporary injunction, it was the case of the Appellant that the structure in question was situated in a slum wherein there were number of other structures. The

Plaintiff also relied upon various documents, amongst which is the letter dated 02.05.2008 addressed by the Assistant Commissioner of the MCGM to the Hon'ble Chief Minister of Maharashtra, the agreement dated 25.02.2008 by which the Plaintiff claims to have purchased the premises, licence issued by the Food and Drugs Administration Department, Government of Maharashtra, agreement of sale and sworn affidavit of predecessors of the Plaintiff, xerox copy of the Ration Card of the predecessor of the Plaintiff, acknowledgment slip issued by the Census authorities to the predecessors of the Plaintiff, NA order and receipts of the payment towards NA issued by the Tahsildar, electricity bills, telephone bills, photographs of the suit premises etc.

3. In so far as the MCGM is concerned, the MCGM in its reply to the Notice of Motion has given the background facts relating to the issuance of the notice under Section 351 of the MMC Act. It has been stated in the said reply that on a site visit by the Junior Engineer of the MCGM, it was found that the structure was constructed unauthorizedly and the same was being used for commercial purposes in the name and style of Hari Om Medical and General Stores, New Link Road, Dahisar (W), Mumbai. It was stated in the said reply that the Plaintiff has not produced any document showing the said construction to be authorized or capable of being protected under the policy of the MCGM.

4. The Trial Court considered the said Notice of Motion and has adverted to the documents produced by the Plaintiff in substantiation of his case that the structure was in existence prior to 01.01.1995. In so far as the letter dated 02.05.2008 addressed by the Assistant Commissioner of MCGM to the Hon'ble Chief Minister of Maharashtra, the Trial Court held that the said letter would not be a proof of the fact that the structure was situated in a slum and that the datum line for being tolerated is 01.01.1995. The Trial Court observed that the Plaintiff has not produced any Gazette or Notification showing that the area wherein the structure is situated has been declared as a slum under the Maharashtra Slum Areas (Improvement, Clearance, Redevelopment) Act, 1971 ("Slum Act" for short). The Trial Court thereafter adverted to the agreement for sale dated 25.02.2008, licence issued by the Food and Drugs Administration Department, Government of Maharashtra as also the agreement entered into between the Plaintiff's predecessor one Ram Bhagoji Gat and the alleged original owner one Shimu Nirsan Pathare as also the Ration Card of the said Ram Bhagoji Gat, the NA order dated 11.12.2013 as also the Award passed by the Lokadalat in Suit No.2262 of 2013 and on such consideration came to a conclusion that the said documents do not prove that the structure was in existence prior to the datum line of 01.04.1962. The Trial Court therefore reached a conclusion that the structure of the

Plaintiff could not be protected even as per the policy of the MCGM and accordingly dismissed the Notice of Motion.

5. The Learned Counsel for the Appellant/Applicant Mr. O. R. Tiwari was at pains to demonstrate that the structure being situated in a slum, the cut of date for protection is 01.01.1995 and not 01.04.1962. In support of the said contention, the Learned Counsel would once again seek to place reliance on the letter dated 02.05.2008 issued by the Assistant Commissioner of the concerned Ward to the Hon'ble Chief Minister of Maharashtra. The Learned Counsel would also seek to place reliance on the documents relating to the predecessor's of the Plaintiff name one Ram Bhagoji Gat and Shimu Nirsan Pathare.

6. In my view, it is not possible to accept the contention of the Learned Counsel Mr. O. P. Tiwari. In so far the Plaintiff is concerned, the fact that he has purchased the premises in question vide agreement for sale dated 25.02.2008 is not in dispute. All the other documents which are the Plaintiff's own documents are also post 2008. In so far as the documents relating to the said Ram Bhagoji Gat and Shimu Nirsan Pathare are concerned, though the said documents are according to the Plaintiff predating 01.01.1995, it cannot be said that the said documents are relating to the same structure, especially having regard to the fact that the

NA order is issued in the year 2003 in favour of the predecessor of the Plaintiff and thereafter in the year 2013 in the name of the Plaintiff. Hence, there is nothing on record in so far as the Plaintiff is concerned, even for coming to a prima-facie conclusion that the structure was in existence prior to 01.01.1995. However, the aforesaid observations are made assuming that the structure is in the area declared as a slum or recognized as a slum, the cut of date for which is 01.01.1995. However, in the instant case, as indicated above, the Plaintiff has not produced any material to show that the area wherein the structure is situated has been declared as a slum under the provisions of the Slum Act. If that be so, then the datum line for protection changes and in so far as the commercial premises are concerned, it is 01.04.1962. In so far as the said datum line is concerned, the Plaintiff has not produced a single document prior thereto. In that view of the matter, the order passed by the Trial Court dismissing the Notice of Motion does not merit any interference. The Appeal from Order is accordingly dismissed.

7. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]