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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.559 OF 2015
WITH
CIVIL APPLICATION NO.710 OF 2015

CVK Associates & Ors.	...Appellants
V/s.	
Municipal Corporation of Gr. Mumbai & Anr.	...Respondents

Mr.Prashant Chavan with Mr.Ravindra Chille and Ms.Ashwini Pawar
i/b Divekar & Co. for the Appellants.

Mr.A.V. Diwate for the Respondent No.1 – B.M.C.

Mr.Zubin Behramkamdin with Mr.Anupam Surve, Mr.Nikhil Mutha,
Ms.Priyanka Gidh and Ms.Prithika Lobo i/b Nanu Hormasjee & Co. for
the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 27TH JANUARY, 2016.

P.C. :-

1. By this appeal from order, the appellants have impugned the order dated 25th February, 2015, dismissing the notice of motion filed by the plaintiffs *inter-alia* praying for injunction against the Municipal Corporation from implementing the impugned notice issued under section 488 of the Mumbai Municipal Corporation Act (MMC Act) and from acting in any manner whatsoever pursuant to the said notice.

2. The appellants had arrived at the consent terms on 2nd

November, 2007 with the landlords of the suit property in Suit No.1626 of 2006. It was provided in the said consent terms that the consent terms with the defendant no.1 who was also the developer and also the co-owner of the suit property would be the confirming party to the said conveyance of the suit property. The appellants commenced the work of interior design of the suit flat on 20th January, 2008.

3. It is the case of the appellants that at the instance of the respondent no.2, the Municipal Corporation issued a notice under section 354-A of the MMC Act alleging various additions / alterations in flat nos.101, 102 and 103. The appellants accordingly filed a suit (984 of 2008) in the Bombay City Civil Court challenging the said notice issued under section 354-A of the MMC Act. The respondent no.2 filed a chamber summons in execution application filed by the appellant for implementation of the consent terms. The Bombay City Civil Court rejected the *ad-interim* relief in the notice of motion filed by the appellants in Suit No.984 of 2008. On 13th May, 2008, the Municipal Corporation issued a notice under section 53(1) of the M.R.T.P. Act, 1966 upon the appellants alleging unauthorized work.

4. On 14th May, 2008 this Court in Appeal from Order No.560 of 2008 permitted the appellants to carry out the change of electrical wiring etc. without prejudice to the rights and contentions of the

Municipal Corporation. This Court also clarified that as far as the tenantable repairs under section 342 of the MMC Act are concerned, the appellants were entitled to carry out as is permissible in law. The appellants thereafter filed a fresh suit (1173 of 2008) in the Bombay City Civil Court, *inter-alia* praying for stay of the notice issued under section 53(1) of the M.R.T.P. Act. The Bombay City Civil Court rejected Notice of Motion No.1117 of 2008 filed by the appellants. In the appeal from order arising out of the said order, this Court directed that no other work except furniture work shall be carried out by the appellants. This Court appointed the Court Commissioner to visit the suit premises and to submit a report on the condition of the suit premises. The appellants were directed to maintain *status-quo* till the decision on the representation of the appellants, which was made before the Municipal Commissioner was taken. The Municipal Commissioner was directed to decide the representation of the appellants to the notice issued under section 53(1) of the M.R.T.P. Act, 1966.

5. On 15th July, 2008, the officer of the Municipal Corporation had inspected the nature of the work carried out by the appellants in the suit premises. The Court Commissioner after visiting the suit premises stated that no work of furniture was going on in the suit premises. The appellants were granted four weeks time to make an

application for regularization for approval of the competent authority by an order of the Assistant Municipal Commissioner dated 24th July, 2008.

6. On 8th August, 2008 this Court recorded that the appellants would make an application for regularization of the work and directed the appellants not to carry out any work, including furniture work in the suit premises. There is no dispute that pursuant to the said order, the appellants applied for regularization. On 27th August, 2008, the Municipal Corporation rejected the proposal for regularization filed by the appellants on the ground that necessary certificates such as original P.R. card, D.P. remark, NOC of the society was not submitted. The appellants were further requested to submit the amended plan incorporating the changes as proposed by the appellants in the said plan through the present Architect.

7. Being aggrieved by the said order passed by the Municipal Corporation on 27th August, 2008, the appellants filed an appeal before the State Government under section 37 of the M.R.T.P. Act. The State Government has admittedly rejected the said appeal. The appellants have filed a Writ Petition (1294 of 2013) *inter-alia* impugning the order passed by the State Government rejecting the appeal filed by the appellants. The said writ petition is pending before this Court.

8. In the meanwhile the Municipal Corporation issued a notice under section 488 of the M.M.C. Act to the appellants on 8th October, 2008. The appellants filed L.C. Suit No.2528 of 2008 challenging the said notice. On 10th October, 2008, the Bombay City Civil Court was pleased to grant *ad-interim* stay in favour of the appellants which was continued from time to time.

9. On 2nd July, 2009, this Court recorded the statement made by the appellants that in the course of regularization proceedings the appellants would not claim the benefit of FSI in violation of clause 4(b) of the M.O.U. On 25th February, 2015, the learned trial Judge dismissed the notice of motion filed by the appellants.

10. Mr.Chavan, learned counsel appearing for the appellants invited my attention to various documents annexed to the plaint and orders passed by this Court in the appeal from order and also the observations made by the learned trial Judge. He submits that the developer has not handed over possession of the area agreed to be handed over under the agreement entered into between the parties. He submits that the learned trial Judge had already granted *ad-interim* protection in favour of the appellants which was in force since 8th October, 2008. He submits that if the said ad-interim order is not continued by this Court, the writ petition filed by the appellants which is pending before this Court impugning the order passed by the State

Government would become infructuous. He submits that the proceedings before the learned trial Judge be expedited.

11. It is submitted by learned counsel that the application for regularization made by the appellants has not been rejected on merits but has been rejected on the ground for non-compliance of certain formalities.

12. Mr.Kamdin, learned counsel for the respondent no.2 placed reliance on the *prima-facie* observations made by the learned trial Judge and would submit that in view of the appellants having filed an application for regularization, which is rejected by the Municipal Corporation as well as by the State Government, the appellants could not continue the proceedings filed before the Bombay City Civil Court for seeking stay of the notice issued under section 488 of the M.M.C. Act. He submits that admittedly the writ Court has not granted any interim relief in favour of the appellants till date. He submits that in view of violation of the F.S.I. committed by the appellants the other projects of the respondent no.2 are held up. He submits that even if there was any grievance of the appellants against the respondent no.2 of having given area less than what was agreed to be given under the consent terms, the appellants could not have carried out any unauthorized construction in violation of the Mumbai Municipal Corporation Act and also the Development Control Regulations. He

submits that the Municipal Corporation as well as the State Government have rightly rejected the proposal for regularization. He submits that no case is thus made out by the appellants for interference with the impugned order passed by the learned trial Judge.

13. A perusal of the record indicates that there is no dispute that pursuant to the order passed by this Court in appeal from order filed by the appellants, impugning the action under section 53 of the M.R.T.P. Act and other orders, the appellants had made the representation to the Municipal Corporation *inter-alia* praying for regularization of the impugned structure. The Municipal Corporation has already rejected the said application for regularization. The appeal filed by the appellants before the State Government under the provisions of the M.R.T.P. Act has been rejected. This Court has not granted any relief in favour of the appellants so far.

14. Insofar as the submission made by learned counsel for the appellants that even if there was any dispute between the appellants and the respondent no.2 about the area agreed to be given and actually not given under the agreement arrived at between the appellants, the appellants could not have carried out any unauthorized construction in view of such dispute.

15. Be that as it may, once the appellants have already filed

an application for regularization of the impugned structure and the said application is rejected by the Municipal Corporation as well as by the State Government, the learned trial Judge in my view, could not have taken a different view in the matter and has rightly rejected the notice of motion. Insofar as the notice issued under section 488 of the M.M.C. Act is concerned, the said notice was in continuation and in furtherance of the earlier action which has attained finality. In my view, there is thus no infirmity with the order passed by the learned trial Judge. In my view since the appellants had already applied for regularization and their appeal is dismissed and writ petition is pending, the appellants could not challenge the validity of the notice issued by the Corporation under section 488 of the M.M.C. Act. The appellants have accepted the validity of the action of the Corporation under section 55 of the M.R.T.P. Act and section 488 of the Mumbai Municipal Corporation Act, 1888. The appeal is devoid of merits and is accordingly dismissed.

16. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

17. At the request of learned counsel for the appellants, ad-interim protection granted by the learned trial Judge and continued by this Court, is continued for a period of eight weeks from today. It is

made clear that the appellants shall not carry out any further construction in the suit premises without obtaining prior permission of the Municipal Corporation during eight weeks and thereafter.

(R.D. DHANUKA, J.)