

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER NO.409 OF 2016
with
CIVIL APPLICATION (St) NO.12048 of 2016

Shankar Prasad Dukhi Prasad Choursiya... .. Appellant
vs
The Municipal Corpn. of Gr.Mumbai & ors .. Respondents

Mr.Sujeet Kurup i/b M/s Kurup Shivaji & Co for Appellant
Mr.S.K.Sonawane a/w Mr.A.V.Diwate for BMC
Mr.Vishal Kanade for Respondent no.3

...
CORAM: G.S.KULKARNI, J
DATE: 6TH MAY, 2016

P.C.

1. Heard Mr.Kurup learned counsel for the appellant/plaintiff, Mr.Sonawane along with Mr.Diwate for respondent nos.1 and 2 and Mr.Kanade learned counsel for the respondent no.3.

2. This appeal has been preferred by the appellant against an order dated 13th April, 2016 passed by the learned Judge, City Civil Court at Bombay (Borivali Division) whereby on a draft notice of motion as moved on behalf of the appellant in L.C.Suit No.1042 of 2016 the learned trial Judge has refused to grant ad-interim reliefs in

the nature of protection that the respondent-Corporation shall not take any action to demolish the suit structure as described in prayer clause (a) of the notice of motion.

3. The dispute as raised on behalf of the appellant in the suit, pertains to a structure as situated on a plot of land described in CTS No.160 (P.T.) in the notice dated 18th December, 2015 issued by the Municipal Corporation under section 351 of the MMC Act. This notice contains a sketch of the objectionable structure which the Municipal Corporation by this show cause called upon the appellant to justify, in regard to its legality. The show cause notice was replied by the appellant by a letter dated 18th December, 2015. What is pertinent from the reply is that the appellant has admitted that this objectionable structure was purchased by the appellant, from one Raghavendra Constructions and is on a private land. This admission on the part of the appellant is significant in as much as the structure then would not have any protection under a slum policy or any other Government policy unless the same has been constructed either with

the prior permission as granted by the Municipal Corporation or the same existed prior to the datum line (17th April 1964) so that it can be in a category of a authorized structure. In this reply dated 18th April, 2016 the appellant also relied on a number of documents.

4. The Designated Officer of the Municipal Corporation after taking into consideration the reply of the appellant to the section 351 notice as also the documents, passed an order dated 6th April, 2016. The Designated Officer reached to a conclusion that the suit structure is objectionable and that the appellant had failed to prove that the structure was authorized and thus, the appellant was called upon to remove the unauthorized structures within seven days from the receipt of the said order failing which action of demolition would be resorted at the hands of the Municipal Corporation.

5. The appellant assailed the above order by approaching the City Civil Court in the suit in question seeking injunctory reliefs

that the Municipal Corporation shall be restrained from taking any coercive action in respect of the suit structure. By the impugned order the prayer for a temporary injunction by way of a ad-interim relief was rejected.

6. In assailing the impugned order passed by the learned trial Judge, Mr.Kurup would submit that as regards the suit structure the Municipal Corporation had already initiated action and part of the structure was demolished. However, further demolition was not undertaken in view of the fact that the structure was being considered to be part of a larger slum scheme. It is next contended that the Municipal Corporation could not have resorted to the provisions of section 351 of the Act in as much as on the respondent no.3's own showing the structure would become part of the development of a slum scheme. In that event recourse to a section 351 action could not have been taken as the provisions would not operate for a slum scheme.

7. In support of his submissions, Mr.Kurup has drawn my attention to the earlier litigation between the parties namely L.C.Suit No.186 of 2015 and written statement filed in the said suit on behalf of Raghavendra Construction Company defendant no.2 in the said proceedings to submit that there was no dispute on the possession and a authorized one, of the appellant in regard to the suit structure. He has next drawn my attention to para 30 of the written statement where it is his contention that the defendant no.3 in the said suit had admitted that occupation of the appellant was 380 sq.ft of which an area of 300 sq.ft was legal and 80 sq.ft was illegal. Mr.Kurup has thereafter relied on a letter of intent issued by the Slum Rehabilitation Authority dated 31st July 2014 to contend that the letter of intent in clause 5 recognizes the rehabilitation component and correspondingly details of the land ownership as per property card in respect of the private land owned and being developed by Raghavendra Construction company defendant no.3. The submission is that all these documents would show that the structure of the appellant is recognized to be authorized and has

become part of the LOI issued by the Slum Rehabilitation Authority. Mr.Kurup has then relied on the IOD dated 20th April, 2014 issued in respect of CTS 610A/1B which is issued in respect of development of private land. My attention is thereafter drawn to the consent terms which are entered between the parties in L.C.Suit No.1420 of 2010 which was a suit between Raghavendra Construction company and Municipal Corporation and a third party who also is in possession of certain structures. Mr.Kurup would rely on the sketch plan which is annexed to the consent terms to show that the suit structure has been shown as part of the sketch plan and therefore, the same is authorized. It is submitted that all these documents are completely overlooked by the learned trial Judge in refusing ad interim reliefs.

8. On the other hand, Mr Kanade learned counsel for respondent no.3 has supported the impugned order. Mr.Kanade would submit that the appellant is arguing a completely new case and not a case which was urged before the trial Court and reflected in the pleadings. It is further submitted that the appellant is

estopped from going behind appellant's own admission as contained in the reply to the letter dated 18th December, 2015 in which the appellant has stated that the suit structure was purchased by him from Reuben Constructions and is on a private land. It is submitted that all the documents which are relied upon by the appellant in reply to the show cause notice issued by the Municipal Corporation under section 351 of the Act pertain to the years between 1994 to 2005. It is submitted that there are no documents produced on behalf of the appellant to show that the structure existed prior to the datum line (17th April, 1964) or any other document to show that the structure has been constructed with prior permission of the Municipal Corporation and/or that it is otherwise a authorized structure. It is thus, submitted that the learned trial Judge after taking into consideration all these facts and documents has rightly rejected the prayers of the appellant for ad interim reliefs.

9. Mr.Sonawane for the Municipal Corporation has supported the impugned order. It is submitted that balance of

convenience is overwhelmingly in favour of the respondent-Corporation in as much as the appellant has miserably failed to prove the legality of the structure or to show that the same is authorized. It is submitted that the Municipal Corporation has rightly initiated action under section 351 of the Act and orders passed thereon are legal and valid.

10. Having considered the submissions as advanced on behalf of the learned counsel for the parties, it is quite clear from the record that the suit structure is on a private land and this has been categorically admitted by the appellant in the reply dated 18th December, 2015 to the show cause notice issued by the Municipal Corporation under section 351 of the Act. On a query being made to Mr.Kurup as to on what basis the appellant is asserting his rights in regard to the suit structure and as to what are the title documents to show that the appellant is the owner or having any other legal rights of occupancy in respect of the said structure, Mr.Kurup states that the appellant has purchased this suit structure from one Mr.Aslam

Chand Khan under “an affidavit” executed by Mr.Aslam Khan. This affidavit is dated 14th September, 2000 and is placed at page 40 of the compilation of documents. It is very surprising as to how the appellant can assert any legal right in regard to an immovable property/suit structure being purchased on an affidavit. Admittedly, there is no registered sale deed by virtue of which the appellant can assert that he would become an owner or acquire title to the property. There is nothing to show that the suit structure was permitted to be constructed either by the original landlords or that there was a construction permission which was granted by the Municipal authorities to construct the said structure. There are no documents which are brought on record to show that the suit structure existed prior to the datum line i.e. 17th April, 1964.

11. From the tenor of the arguments as advanced by Mr.Kurup it appears that the appellant is making a lame attempt to assert some rights to derive benefit out of the illegal structure only on the basis of certain proceedings which are absolutely non-

germane to the controversy in hand. The learned trial Judge in passing the impugned order has taken into consideration the basic requirement necessary to be examined in the context of a notice issued under section 351 of the Act issued by the municipal Corporation. The Municipal Corporation in the present case has adopted due procedure in law by issuing a section 351 notice. The appellant was permitted to submit a reply and accordingly a final order came to be passed on the show cause notice to hold that the suit structure is unauthorized. From the perusal of this order it is quite clear that the appellant has miserably failed to point out any perversity or any illegality in the Municipal Corporation objecting to the structure and ultimately coming to a conclusion that the structure is totally unauthorized. On the appellant's own admission the structure is not in the area which is notified as a slum area and therefore, there is no question of any protection to be granted to the slum structure under any policy of the State Government. If these are facts, then I am of the clear opinion that this appeal does not call for any interference. In any event, the impugned order has rejected

the ad interim reliefs. The above discussion clearly reveals that there is no error whatsoever on the part of the learned trial Judge in passing the impugned order. The appeal is completely misconceived and deserves to be dismissed. It is accordingly dismissed. No costs.

12. Civil Application (St) No.12048 of 2016 would also not survive and is disposed of accordingly.

13. At this stage, learned counsel for the appellants submits that the respondents should be restrained for a period of two weeks from taking any coercive action. Mr.Kanade for the respondent no.3 and Mr.Diwate and Mr.Sonawane for the Municipal Corporation vehemently oppose this request of Mr.Kurup. On the facts and circumstances of the case as noted above, the request of Mr. Kurup is rejected.

G.S.KULKARNI, J

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