

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 12408 OF 2016
with
Civil Application No.561 of 2016

Hicons Developerws Private Limited ...Appellant

Versus

The Municipal Corporation Of Greater
Mumbai

...Respondent

Mr.Shoaib I.Memon, for the Appellant.

Mr.A.V.Diwate, for Respondent No.1-BMC.

Ms.Shilpa Kapil with Mr.Chidan and Nupur Mittal, for Respondent No.2.

CORAM: G. S. KULKARNI, J.

DATED: 29th April, 2016

PC:-

Not on board Taken on Board.

1. This matter is moved at the instance of the Appellant on a praecipe seeking urgent ad-interim orders, as the learned Judge of the City Civil Court at Mumbai (Dindoshi, Borivali Division) has passed the following impugned order dated 14th March,2016 on a draft Notice of Motion taken out in L.C.suit No.580 of 2016 which reads thus:-

“1. The defendant No.1/M.C.G.M. is restrained from

implementing notice in respect of unauthorised addition/alteration at Sr.No.1 and 2 of the Schedule of impugned notice, till decision on proposal submitted by Architect of the plaintiffs.

2. Ad-interim relief in respect of construction of building above 12 floors as mentioned at Sr.No.3 of Schedule of impugned notice is rejected.”

2. The grievance of the Petitioner is in respect of a notice issued by the Bombay Municipal Corporation as regards construction of the building in question from 13th to 16th floor which is stated to be unauthorised and illegal. Further, it appears that though the IOD condition requires that the NOC from the Airport Authority is to be obtained for any construction above 12th floor, the same is not obtained by the Appellant-Plaintiff in undertaking the construction from 13th to 16th floors. That is how the Notice came to be issued by the Corporation under Section 53(1) of the Maharashtra regional and Town Planning Act on 1st October,2015.

3. I have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Airport Authority and Mr.Diwate, learned Counsel appearing for the Municipal Corporation. Learned Counsel for the Airport Authority has relied upon the decision of the Division Bench of this Court in *Writ Petition (lodg) No.550 of 2016*

dated 20th April, 2016 (Havemore Realty Pvt.Ltd.Vs. Union of India & Ors.)

on similar facts. The Division Bench has made pertinent observations in paragraphs 7 to 9 of the order which would be relevant in the controversy as would arise in the present proceedings, which read thus:-

“7. On instructions, Mr. Balsara states that, within a period of 45 days from today, these two floors would be completely demolished and proof of such demolition would be produced by addressing a letter / intimation to the Mumbai International Airport Ltd. and Airport Authority of India Ltd. The said authorities can come and carry out inspection at site, but they must expedite the process of aeronautical survey.

8. After hearing the counsel on this limited point, we direct that, in the event, the Petitioners comply with their statement made today and carry out demolition and complete it within the period stipulated above, then, the respective authorities shall carry out inspection, on receipt of the intimation of demolition from the Petitioners. The inspection be carried out and completed within two weeks from the date of receipt of such intimation. Thereafter, we would expect these authorities to carry out aeronautical survey latest by eight weeks from the date of inspection. Mr. Balsara states that all reasonable costs for carrying out survey shall be borne by the Petitioners, as they are interested in going ahead with the project. They would also execute necessary agreements and after the site inspection is carried out, the authorities can be rest assured that not only the agreements would be executed, but, even the costs, charges and expenses, which are required to carry out survey, would be deposited with them.

9. Needless to clarify, that when the Petitioners communicate to the Airport Authority of India and Mumbai International Airport Authority that they have carried out demolition, they must also

inform the Slum Rehabilitation Authority. The Slum Rehabilitation Authority must depute its representative and verify whether such demolition is carried out at site and prepare a report and duly forward it to Airport Authority of India and Mumbai International Airport Authority.”

The above orders of the Division Bench are clear whereby the demolition of the illegal floors is considered to be a prerequisite in similar situation.

4. Learned Counsel for the Appellant has drawn my attention to some fresh material to contend that the Municipal Corporation had in fact accepted the penalty by order dated 19th October, 2007 in regard to the construction from 13th to 17th floor and it is thus the contention on behalf of the Appellant is that the construction of 13th to 16th floor is not illegal or unauthorised and, therefore, the notice issued by the Municipal Corporation under Section 53(1) of the Maharashtra Regional and Town Planning Act was not called for.

5. The Appellant intends to rely on this fresh material which was not before the Trial Court. If that be the case the Appellant can always place such material for consideration of the trial Court in the pending notice of motion. No liberty is required from this Court for that purpose.

6. Thus, no interference is called for in this appeal and more

particularly in view of the observations of the Division Bench as noted above. The Appeal from Order is accordingly dismissed.

7. As the appeal itself is disposed of as aforesaid, the Civil Application would not survive and the same is accordingly disposed of.

(G. S. KULKARNI,J.)