

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3141 OF 2016

ALAMGIR VAJIDALI CHOWDHARI

...Petitioner

Versus

MRS. NARMADADEVI SHIVPUJAN

VISHWAKARMA AND ORS

...Respondents

....

Mr. Prayag Joshi i/b. Mr. Bipin Joshi, Advocate for the Petitioner.

Mr. Altaf Khan, Advocate for Respondent Nos.1 and 2.

Mr. Vinod Mahadik, Advocate for Respondent Nos.3 and 4-BMC.

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CORAM : R. G. KETKAR, J.

DATE : 06th APRIL, 2016

P.C.

1. Heard Mr.Joshi, learned Counsel for petitioner, Mr.Khan, learned Counsel for respondents No.1 and 2 and Mr.Mahadik, learned Counsel for respondents No.3 and 4-BMC at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 27.03.2015 passed by the learned Judge, presiding over Court Room No.11 of the Bombay City Civil Court at Bombay in Chamber Summons No.2884 of 2013 in Long Cause Suit

No.3562 of 2013. By that order, the learned trial Judge rejected the Chamber Summons taken out by the petitioner for adding him as a party in the Suit.

3. Respondents No.1 and 2, hereinafter referred to as 'plaintiffs', have instituted Suit against respondents No.3 and 4, hereinafter referred to as 'defendants No.1 and 2', *inter alia* praying for perpetual injunction restraining them from demolishing Amrit Art Furniture, Shop No.17, Vajid Ali Compound, 90 Ft Road, Tilak Nagar, Saki Naka, Mumbai 400 072, without following due process of law.

4. Mr. Khan appearing for the original plaintiffs submitted that the alleged notice dated 06.08.2013 issued by the Corporation under Section 351 of the Mumbai Municipal Corporations Act, 1888 (for short 'Act') was not served on the plaintiffs. That apart, in the order dated 25.09.2013, the learned trial Judge recorded the statement that the suit structure has not been demolished. It is however, not in dispute that the petitioner, who took out Chamber Summons, brought on record notice issued under Section 351 of the Act on 06.08.2013. Plaintiffs, however, have not amended the plaint.

Having regard to the prayer made in the plaint, indicated hereinabove, as the Corporation has issued notice under Section 351 of the Act, the Suit does not survive and the same is liable to be disposed of. Parties are at liberty to produce this order before the trial Court for formally disposing of the Suit.

5. Mr. Khan submits that pending this petition, the Corporation has issued fresh notice under Section 351 of the Act on 22.3.2016. The petitioner has filed reply dated 29.3.2016. Mr. Mahadik has tendered photographs of the suit premises which are taken on record and marked "X" collectively, for identification. Mr. Mahadik assures that within four weeks from today, the Corporation will consider the reply and communicate its decision to the petitioner.

6. In view thereof, the petition is disposed of in the following terms :

- (i) The Corporation will take decision on the notice issued under Section 351 of the Act on 22.3.2016 and will pass a speaking order and communicate its decision to respondent Nos.1 and 2 herein within four weeks from

today.

- (ii) Liberty is reserved with respondent Nos.1 and 2 to challenge the order if it is adverse to them. In the meantime, the Corporation and respondent Nos.1 and 2 shall maintain status quo as regards the suit property as per the photographs placed on record as regards the suit property, for a period of six weeks from the date of communication of the decision of the Corporation.
- (iii) Liberty is reserved to the petitioner to consider filing an application for intervention if so advised. All contentions on merits are expressly kept open.
- (iv) Petition is disposed of accordingly.

(R. G. KETKAR, J.)