

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3052 OF 2016
IN
FIRST APPEAL NO.1146 OF 2016
IN
L.C.SUIT NO.308 OF 2012

Smt.Niraj Harisharansingh Chauhan ..Applicant/Appellant

V/s

Municipal Corporation of Greater Bombay. .. Respondent

Mr. B. S. Shukla for the Applicant.

Mrs.M. Bhoir for the Respondent.

CORAM : G.S.KULKARNI, J.
DATE : 14th DECEMBER,2016

P.C.:

1. Heard learned counsel for the Applicant/Appellant and the Respondent. The Appellant is the original Plaintiff and Respondent is the original Defendant in the suit as decided by the learned Judge City Civil Court at Mumbai. In this application for the sake of convenience, parties are referred to as a stand in appeal.

2. By this Civil Application, the Appellant/Applicant seeks following reliefs:-

- "(a) that pending the hearing and final disposal of the appeal, temporary order and injunction of this Hon'ble Court may be issued against the Defendants, their servants and agents and all persons claiming by through or under them from or in any manner demolishing the suit premises viz. Structure, admeasuring 10' X 20', consisting of ground plus mezzanine floor, made of B.M.Wall and A.C.Sheet roof, situated at CTS No.181(pt), Rambhan Chawl, Near Shivaji Talao, Jungle Mangal Road, Bhandup(W), Mumbai-400 078, in pursuance of notice dated 19-1-2012 and order dated 13-11-2013 passed by the Asst. Commissioner 'S' Ward;
- (b) ad-interim relief in terms of prayer (a) above;
- (c) such other and further relief be granted in the nature and circumstances of the case".

3. By the impugned judgment and order dated 24/06/2016 the appellant's L. C. Suit No. 308 of 2012 whereby a relief of a permanent injunction to restrain the Respondent /Municipal Corporation, from taking action under the Eviction Notice issued by the Respondent/Municipal Corporation under Section 314 of the Mumbai Municipal Corporation Act, 1888, was sought, has been dismissed.

4. The case of the Appellant before the trial Court was that she was in occupation and possession of an alleged authorized structure being CTS No.181 (pt.), Rambhan Chawl, Near Shivaji Talao, J. M. Road, Bhandup (West), Mumbai- 400 078. She had therefore, become entitled for an alternate accommodation as the structure was to be demolished for a public purpose, namely, beautification of Shivaji Lake situated at Jungle Mangal Road, Bhandup (W), Mumbai- 400 078. The case of the Appellant seeking protection of her structure and/or claiming alternative premises was on the basis of a property tax Assessment extract dated 28th December 2012 for the year 2011-2012, whereby it was contended that the suit structure is an assessed structure and, therefore, it is an authorized structure. The second contention was on the basis of the N.A. Assessment order dated 4th February 1991, a copy of which is at page 69 of the paper book, which is totally unreadable. The learned trial Judge in the impugned Judgment has examined the case and contentions of the Appellant that the suit structure is a protected authorised structure and has disbelieved the same. The Appellant did not step into the witness box, but the husband of the Plaintiff Mr.Harishsharansingh Chauhan examined himself. He was cross-examined on behalf of the Defendant/Municipal Corporation.

In the cross-examination, the said witness of the Appellant admitted that the name of the Appellant mentioned in the Assessment Bill is not the same as mentioned in the plaint. He further admitted that the address mentioned in the Assessment Bill at exhibit "9" is not exactly the same as mentioned in the Plaint. He also admitted that the "Jungle Mangle Road" on which the suit structure is situated, is stretched to a long distance. He also admitted that there was no correspondence by the Appellant for correction in the Assessment Bill on the basis of which it was contended that the structure was authorized. The witness also admitted that the N.A.order does not mention the address "Near Shivaji Talav". The witness further admitted that the Appellant has not mentioned the name of the shop "Sharan Traders" either in the plaint or in his affidavit of evidence. These were the clear admissions which inter alia has made the learned trial Judge to disbelieve in totality the case of the Appellant.

5. The learned counsel for the Appellant in this appeal, as well, has drawn my attention to the said two basic documents on which reliance was placed before the trial Court to contend that the structure was authorized. This appears to be the only material. As

noted above, the first document being the Assessment extract though is issued in the name of Niraj H. Singh, the address thereon clearly indicates that it pertains to a structure which is assessed as A.C.Shed Shop, opposite Laxmi Hotel at Jungal Mangal Road. The suit premises admittedly are located at Shivaji Lake, Jangle Mangal Road, Bhandup (W), Mumbai 400 078 and, therefore, the address of the suit structure is not the address with which the Assessment Bill is concerned, as rightly observed by the learned trial Judge in the impugned order. The second document namely the N.A order which also in no manner indicate even remotely that it pertains to the suit structure.

6. Having considered all these documents on record and the observations of the learned trial Judge, I am of the clear opinion that the appellant cannot be granted any protection pending the decision of the appeal. The Appellant has no document to support her case that the suit structure is authorised and thus the appellant is not entitled for a permanent, alternative accommodation to be allotted by a public body like the Municipal Corporation. The whole attempt of the appellant is to survive on interim injunction without any legal right to become entitled for it even remotely.

7. It cannot be overlooked that ultimately, the notice issued by the Municipal Corporation under Section 314 of the Mumbai Municipal Corporation Act is issued in public interest for a public purpose. Resultantly, I am certain and of the clear opinion that Civil Application as filed is without any merit. Civil Application is accordingly rejected. Hence, it is rejected. No costs.

8. At this stage, learned counsel for the Appellant seeks continuation of the ad-interim protection granted by the trial Court and continued by this Court. Though it is opposed on behalf of the Municipal Corporation, on the ground that, it would seriously prejudice the public purpose, as also that the Appellant in her litigating tendency has already delayed the public purpose, the same is continued for a period of two weeks from today. No further request for an extension of time shall be entertained.

[G.S.KULKARNI,J]