

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 20180 OF 2016

IN

NOTICE OF MOTION NO. 3022 OF 2015

IN

L.C. SUIT NO. 2990 OF 2015

WITH

CIVIL APPLICATION (ST.) NO. 20182 OF 2016

IN

APPEAL FROM ORDER (ST.) NO. 20180 OF 2016

Mr. Imran Siddique

...Appellant
(Orig. Plaintiff)

Versus

Municipal Corporation of Gr. Mumbai

...Respondent
(Orig. Defendant)

Mr. Vishal Kanade, i/b Mr. Sumeet Vankadkar, for the Appellant.

Mr. S.K. Sonawane, a/w Mrs. Madhuri More, for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 27th July 2016

P.C. :

1. The above Appeal from Order challenges the Order

dated 29th June 2016 passed by the learned Judge of the City Civil Court, Borivali, Dindoshi, Mumbai by which order Notice of Motion No. 3022 of 2015 came to be dismissed.

2. The Appellant herein is the original Plaintiff who has filed the Suit in question being L.C. Suit No. 2990 of 2015 challenging the Order dated 8th October 2015 passed by the Competent Authority that is the Assistant Commissioner, K/West Ward by which Order, the Assistant Commissioner has directed the Plaintiff to remove his structure within 48 hours from the receipt of the order, failing which the Plaintiff was put to the notice that the structure would be demolished by the said office. The Plaintiff's structure was coming within the alignment of the 60 feet D.P. Road. Hence, the Plaintiff was called upon to submit documents to show the existence of the structure prior to 1st January 1995 and 1st January 2000 so as to be entitled to the allotment of the permanent alternate accommodation as and by way of rehabilitation under the policy applicable to the Mumbai Urban Transport Project ("M.U.T.P." for short). The Plaintiff was held eligible to the allotment of permanent alternate accommodation. It seems that on account of the complaints made in respect of the allotment of permanent alternate

accommodation to the slum dwellers in Juhu Lane, Gandhi Nagar, Andheri West that an enquiry was conducted in respect of the said allotments. Insofar as the Plaintiff's structure is concerned, the M.M.R.D.A., which is the implementing agency of the M.U.T.P informed the M.C.G.M. that a permanent alternate accommodation has already been allotted to one Mr. Shaikh Nijammudin Yusuf, whose structure was affected by 120 feet wide road and that the structure of the said Mr. Shaikh Nijammudin Yusuf is presently occupied by the Plaintiff, and therefore, the Plaintiff would not be entitled to the allotment of permanent alternate accommodation. An enquiry was conducted in respect of the allotment made to the Plaintiff and the Plaintiff was asked to produce documents before the Competent Authority of the M.C.G.M. that is the Assistant Commissioner, K/West Ward. As indicated above, in the said order dated 8th October 2015 it is observed that the Plaintiff has illegally occupied the structure of the said Mr. Shaikh Nijammudin Yusuf and therefore, directed the Plaintiff to remove this structure as otherwise the structure would be removed by the M.C.G.M. by taking assistance of the police. The substance of the said Order dated 8th October 2015 is therefore, cancellation of the eligibility of the Plaintiff for allotment of the permanent alternate accommodation. The said letter

dated 8th October 2015 has given rise to the filing of the Suit in question by the Plaintiff, wherein the Plaintiff has questioned the said Order dated 8th October 2015 passed by the Competent Authority. Significantly to the said Suit, the Plaintiff has not joined the M.M.R.D.A. as party Defendant, though the Order dated 8th October 2015 is founded on the information provided by the M.M.R.D.A. pursuant to which the entitlement of the Plaintiff has been cancelled.

3. The Plaintiff sought to rely upon a host of documents, which according to him, are relating to his predecessors right from 1st January 1995. The Competent Authority did not countenance the said documents, as it is on the basis of the said documents that the Plaintiff was earlier wrongly held to be eligible. The Trial Court considered the said documents and found various discrepancies in them. One of the discrepancy is that the structure occupied by one of the predecessors of Mr. Shaikh Nijammudin Yusuf is a residential structure whereas the structure of the another person who the Plaintiff claims was his predecessor i.e. one Mr. Abid Nazir Shah the structure is commercial. There is no document in the name of the Plaintiff except the agreement of sale executed by the said Abdul Nazir Shah in favour of the Plaintiff, but what has weighed with the

Trial Court is the factum of one Mr. Shaikh Nijammudin Yusuf being already allotted permanent alternate accommodation for the structure presently occupied by the Plaintiff. The Trial Court has also considered the fact that the Plaintiff's structure is falling within the alignment of 60 feet D.P. Road at Gandhi Nagar, Andheri West and if any injunction is granted, the same would create an obstacle in the construction of the said 60 feet D.P. Road and thereby public at large would be affected.

4. As indicated above, though the challenge in the Suit filed by the Plaintiff is to the Order dated 8th October 2015, the M.M.R.D.A. which is the implementing agency of the M.U.T.P. was not joined as a party Defendant in the Suit, though the said order has been founded on the information supplied by the M.M.R.D.A.

5. In my view, since the Plaintiff has not chosen to join the M.M.R.D.A. in the suit he is not entitled to contend that the structure occupied by the said Mr. Shaikh Nijammudin Yusuf was a different structure, than the one which is in occupation of the Plaintiff. The scheme of rehabilitation propounded by the State Government is for rehabilitation of the project affected persons though they have no vestige of right or title to the land on which the structure is situated.

The said scheme therefore, cannot be exploited for self profiteering or for having more than one allotment for the same structure. In my view, therefore, no case for interference is made out. The Appeal from Order is accordingly dismissed.

6. In the facts and circumstances of the case, where the structure is required to be removed for construction of the 60 feet D.P. Road, the oral application for continuation of stay is rejected.

[R.M. SAVANT, J.]