

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2174 OF 2016
IN
WRIT PETITION NO. 11627 OF 2013

Mr.Shabbir Ahmed S.Khan .. Applicant

In the matter between

Mr.Abdul Hamid Khan Matwan .. Petitioner

Vs.

Thane Municipal Corporation and ors. .. Respondents

Mr.Shantanu Phanse a/w Mr.Sarfaraz Khalife a/w Mr.A. A. Maniyar, for the Applicant.

Mr.S.Oka, for Respondent No.1

Ms.Minal Y.Shekhar, for Respondent No.2.

Mr.P. P. Kakade, AGP for Respondent No.4 – State.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
DATE : 31st AUGUST, 2016**

P.C. :

. Parties through their Counsel.

2. Feeling aggrieved by order dated 01/08/2016 passed by the 7th Joint Civil Judge, Senior Division, Thane below Exhibits 16 & 17 in Regular Civil Suit No. 611 of 2016, the applicant has filed this Civil Application.

3. According to the applicant, the trial Court rejected his application for injunction on the ground that this Court in Writ Petition No. 11627 of 2015 had decided the issue. Briefly stated, earlier Civil Suit was filed by the applicant against the private respondent. In that Civil Suit, injunction was granted in favour of the applicant. The private respondent of the said Suit filed Appeal before this Court which also suffered dismissal and order of status quo was passed by this Court while dismissing the Appeal. In the meantime, Thane Municipal Corporation had issued a notice for demolition of the structure in question invoking the powers under Section 260 of the Maharashtra Municipal Corporations Act and since no further steps were taken by the Municipal Corporation in regard to the said notice, Writ Petition No.11627 of 2015 was filed before this Court. While disposing of the said Writ Petition, this Court merely issued a direction to the Corporation to take appropriate action in accordance with law, if there is no legal impediment for removal of the alleged unauthorised structure. However, the trial Court taking the said direction to be the direction to

implement the notice issued by the Corporation declined to consider the applicant's application seeking challenge and injunction to the said notice.

4. Having gone through the order passed by the trial Court and the earlier order passed by this Court, we are of the view that the trial Court has mis-directed itself in observing that this Court in Writ Petition No. 11627 of 2015 has decided the issue which has been raised by the applicant in the Civil Suit filed against the Municipal Corporation challenging the impugned notice. We find that this Court had very specifically stated that the Corporation to proceed in respect of the said notice, "if there is no legal impediment." Since the applicant has filed the Suit and has applied for injunction, the trial Court was duty bound to decide the said application on its own merits, more particularly, when there is no specific order passed by this Court giving complete freehand to the Corporation to proceed in respect of the said notice.

5. In this view of the matter, we set aside the impugned order passed by the trial Court and direct the trial Court to decide the Suit and the application for injunction filed by the applicant on its own merits.

6. We also record the statement made by the learned Counsel for the applicant that in regard to the Appeal filed against the impugned order the same will be withdrawn by the applicant and the necessary steps for withdrawal will be taken by the applicant by tomorrow. Keeping in view the aforesaid peculiar facts and taking note of the fact that the Appeal would lie before a Single Bench and in that Appeal, it may not be possible for the learned Single Judge to interpret the earlier orders passed by this Court, we have passed this order.

7. The Civil Application is disposed of.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)