

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.341 OF 2015

Deepak Kanu Patil .. Appellant
Vs.
Municipal Corporation of Gr.Bombay .. Respondent

Mr.H.S. Anand for the appellant.
Mr.S.K.Sonawane for the respondent-BMC.
Mr.Ramesh Rammurthy for the intervener.

CORAM : R.D. DHANUKA, J.
DATE : 24th February 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 16th August 2014 dismissing the notice of motion filed by the appellant (original plaintiff) in which the appellant had prayed for an injunction against the Municipal Corporation from implementing and/or enforcing the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) and the impugned order dated 19th April 2014 passed by the Designated Officer of the Municipal Corporation calling upon the appellant to demolish the suit structure.

2. The Municipal Corporation had issued a notice on 25th February 2014 under Section 351 of the MMC Act. In response to the said notice, the appellant submitted a reply on 4th March 2014 alleging that the suit structure is quite old. The Designated Officer considered various documents produced by the appellant and passed a detailed order holding that none of the documents submitted by the appellant proved the existence of the notice structure as authorised one or in existence prior to the datum line.

2. Learned counsel appearing for the appellant invited my attention to the documents which were produced by the appellant before the Designated Officer and before the learned trial Judge and would submit that the Assessment Bill produced by the appellant would indicate that the suit structure was in existence prior to 1961-62. It is submitted that this Court had granted ad-interim relief in favour of the appellant in the writ petition filed by the appellant in which the appellant had impugned the refusal of the ad-interim relief granted by the learned trial Judge. He submits that this Court has considered the said Assessment Bill while granting the ad-interim relief.

3. Learned counsel appearing for the appellant submits that before issuing a notice under Section 351 of the MMC Act, the appellant had already obtained sanction of the Deputy Municipal Commissioner. The Municipal Corporation thereafter had issued a notice under Section 351 of the MMC Act to the plaintiff. He submits that the learned Designated Officer did not consider the documents produced by the appellant properly and has passed an illegal order of demolition. It is submitted that the learned trial Judge also has not considered the documents produced by the appellant properly and has dismissed the notice of motion.

4. Learned counsel appearing for the Municipal Corporation, on the other hand, invited my attention to the documents produced by the appellant and also to the order passed by the learned Designated Officer. He submits that the onus was on the appellant to prove that the impugned structure which was subject matter of the notice issued under Section 351 of the MMC Act has been in existence since prior to the datum line. He

submits that the appellant had tried to mislead the Designated Officer as well as the learned trial Judge by placing reliance on the Assessment Bill annexed at Page 80 of the appeal paper book. He submits that the said Assessment Bill would indicate that prior to the datum line, the structure was ground floor structure and not ground plus three storeyed structures. He submits that the learned trial Judge has rightly made an observation in the impugned order about the conduct of the appellant in misleading the learned trial Judge by placing reliance on such Assessment Bill which would not indicate that the structure of ground plus three storeyed was in existence on the date of the datum line.

5. I have perused the documents produced by the appellant and also the order passed by the Designated Officer. I have also perused the order passed by the learned trial Judge.

6. A perusal of the record clearly indicates that it is not the case of the appellant that the appellant has obtained permission from the Municipal Corporation for carrying out construction of the impugned structure. In the reply filed to the notice under Section 351, the only contention of the appellant was that the suit structure was very old. In my view, the onus was on the appellant to prove that either the appellant had obtained permission from the Municipal Corporation or that the same has been in existence since the cut-off date of 1962. The appellant has not able to prove that the suit structure was in existence on the date of datum line.

7. In so far as the reliance placed on the Assessment Bill annexed at pages 80 and 81 is concerned, a perusal of the Assessment

Bill clearly indicates that on the datum line, the suit structure was ground floor and not ground plus three storeyed. The appellant has tried to mislead the learned trial Judge as well as the learned Designated Officer by placing reliance on the said Assessment Bill. Similar attempt is made also before this Court.

8. A perusal of the order passed by the learned trial Judge indicates that the appellant has also tried to mislead by producing the documents for some other structures before the learned trial Judge and had submitted that the said documents were relating to suit structure in support of the plea that the suit structure was in existence prior to the cut-off date. The observation made by the learned trial Judge about the conduct of the appellant is rightly made. A person who does not come to the Court with clean hands and suppresses the true and material facts and tries to mislead the Court cannot be granted any relief. The learned trial Judge has rightly refused to grant ad-interim order in favour of the appellant.

9. In my view, there is no infirmity with the order passed by the learned trial Judge. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

10. Prayer of the learned counsel for the appellant to continue the ad-interim protection is rejected.

R.D. DHANUKA, J.