

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.25546 OF 2016

IN

NOTICE OF MOTION NO.3323 OF 2015

IN

B.C.C.C. L.C. SUIT NO.3354 OF 2014

United Construction,	]	
A Partnership Firm registered under	]	
Indian Partnership Act, 1932, having	]	
its Office at 3, Silver Shell, Ground Floor,	]	
Opp. Holy Cross, I.C. Colony, Borivali	]	
(West), Mumbai – 400 103.	]	 Appellant
Versus		
1. Municipal Corporation of Greater Mumbai	]	
having its Office at Mahapalika Bhavan,	]	
Mahapalika Road, Mumbai – 400 001.	]	
	]	
2. A.T. Corporation	]	
having its office at A-2, 207, Plot No.1,	]	
Linking Road, Daulat Nagar, Relief Road,	]	
Santacruz (West), Mumbai – 400054.	]	 Respondents

Mr. Harish R. Pawar for the Appellant.

Mr. P.G. Lad, Sr. Counsel, a/w. Ms. Madhuri More and Ms. Aparna Murlidharan, for Respondent No.1-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND SEPTEMBER 2016.

ORAL JUDGMENT :

1. Admit. Heard learned counsel for the parties finally at the stage of admission itself. Learned counsel for respondent No.1-Municipal Corporation waives service of notice.

2. This appeal takes an exception to the Judgment and Order dated 19th August 2016 passed by the City Civil Court, Mumbai in Notice of Motion No.3323 of 2015 in L.C. Suit No.3354 of 2014. By the impugned order, the Trial Court was pleased to dismiss the Notice of Motion and thereby rejected the appellant's prayer for restraining respondent No.1-Municipal Corporation from executing 'stop work orders' dated 21st October 2014 and 13th July 2015 and the consequent orders passed by respondent No.1-Municipal Corporation for demolition of the suit structure.

3. Brief facts of the appeal are to the effect that, by virtue of Sale Deed dated 25th February 2014, the appellant has purchased the suit property on '*as is where is*' basis. The suit property, according to the appellant, is a '*ground + 4 floors building*', formerly known as "*Roop Niketan*" and now known as "*Shanidev*", bearing C.T.S. No.279 of Colaba Division, situated at Street No.61-63, Rajwadar Street, Colaba, Mumbai-400 005.

4. As per the appellant, even before he purchased the said property, from the M.L.A. fund, initial amount of Rs.1,00,000/- and thereafter the amount of Rs.10,00,000/- was sanctioned for repair work of the said building. The work order to that effect was also issued on 1st February 2014, the copy of which is produced at "Exhibit-D", page No.160, of the

paper-book. Reliance is also placed on this work order to submit that, along with the work order, there was also the plan sanctioned by the two Executive Engineers of the MHADA, in which the suit structure is shown as '*ground + 4 upper floors*'. Reliance is further placed on the letter given by the Architect, certifying that the said building was of '*ground + 4 upper floors*'. It is urged that in pursuance of the said work order, appellant has started carrying out repair works and, admittedly, the said repair work was of the property consisting of '*ground + 4 upper floors*'. However, the notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 came to be issued on 21st October 2014, calling upon the appellant to stop the execution of work forthwith, or, to produce the permission within 24 hours. In the said notice, it was alleged that there was unauthorized part demolition and reconstruction of existing cessed building on its rear side.

5. On receipt of this notice, appellant approached the Trial Court and filed the instant Suit seeking the relief of injunction, thereby restraining respondent No.1-Municipal Corporation from taking any action in pursuance of the said notice.

6. Along with the said Suit, the appellant also filed Notice of Motion No.3354 of 2014. On this Notice of Motion, the ad-interim relief was granted on 16th December 2014, directing both the parties to maintain

status-quo till respondent No.1-Municipal Corporation files reply to the said Notice of Motion.

7. The grievance of the appellant is that, in the meanwhile, the respondent No.1-Municipal Corporation issued two more notices; first, dated 13th July 2015, and, second, dated 1st August 2015, informing the appellant that, he has carried out construction work, totally, of a new building and without obtaining necessary permission or getting the plan sanctioned for the same. It was further informed to him that, the reply he has submitted to the notice already issued to him on 21st October 2014, being not satisfactory and hence not acceptable, whatever work he has carried out is required to be stopped and needs to be demolished.

8. The appellant, therefore, again rushed to the Court and filed this present Notice of Motion seeking the reliefs, as stated above, of restraining respondent No.1-Municipal Corporation from taking any steps of demolition of the suit structure in pursuance of the impugned two notices.

9. This Notice of Motion came to be resisted by respondent No.1-Municipal Corporation on several counts; firstly, by submitting that the original structure was only of '*ground + 1 floor*'. However, by misguiding

the MHADA Authorities and producing forged documents in the name of Architect, the appellant has misrepresented that it was the structure of '*ground + 4 upper floors*', having 24 tenants. By placing reliance on various documents, like, the Municipal Tax Assessment Bills, Electricity Bills and the Voters' List, it was pointed out to the Trial Court that, since beginning, the structure was only of '*ground + 1 floor*' and there were only 12 to 13 tenants and not 24 tenants, as stated in the work order, or, as claimed by the appellant. It was also pointed out before the Trial Court that the appellant has not produced any sanctioned plan from the respondent No.1-Municipal Corporation, which is the Planning Authority, to show that earlier structure was of '*ground + 4 floors*' and it was authorized. It was further submitted that the plan on which the appellant is relying upon to be certified by the two Executive Engineers of MHADA, on the basis of the letter/certificate issued by the Architect, is totally fraudulent. Respondent No.1-Municipal Corporation has taken action of filing complaint with the Police against those two Executive Engineers of MHADA. The offence is also registered against them and the Architect has denied issuing of such letter/certificate. Thus, respondent No.1-Municipal Corporation strongly opposed the grant of any such relief, as claimed by the appellant, in the said Notice of Motion.

10. The respondent No.1-Municipal Corporation, at the same time, filed

two other Notices of Motion calling upon the Trial Court to take necessary action against the appellant for violating the order of status-quo and also for demolition of whatever structure the appellant has so far completed, during pendency of the Notice of Motion.

11. The Trial Court has, vide its impugned order, dismissed the Notice of Motion filed by the appellant, on coming to the conclusion that, the sole authority to approve the construction plan and to grant sanction is the Municipal Corporation and appellant has not produced on record any document, worth the name, to show that the structure earlier existing was of '*ground + 4 upper floors*'. It was held by the Trial Court that the entire reliance of the appellant was on the plan of MHADA, certified by two Executive Engineers of the MHADA. However, as the MHADA is not the authority to approve the sanctioned plan, no reliance can be placed on the said plan.

12. In view thereof, the Trial Court has dismissed the Notice of Motion by holding that, the appellant has not placed any document to indicate that construction of '*ground + 4 upper floors*' has been sanctioned by the respondent No.1-Municipal Corporation.

13. While challenging this order of the Trial Court in this appeal, the

submission of learned counsel for the appellant is that, admittedly, at this stage, the building having '*ground + 4 upper floors*' is in existence. The fact that the building was having '*ground + 4 upper floors*' can also be made out from the description of the suit structure, as given in the Sale Deed, under which the appellant has purchased the same on 25th February 2014. Reliance is also placed by learned counsel for the appellant on the list of the tenants, as annexed to the said Sale Deed, and it is urged that, there are totally 24 tenants and they are situated or located from ground to four floors; the details to that effect are also given in the Schedule to the said Sale Deed.

14. Further, reliance is also placed by learned counsel for the appellant on the work order issued by the Mumbai Building Repair and Reconstruction Board, (*for short, "the MBRR Board"*), to submit that the list of the tenants included therein, is also of 24 tenants.

15. Learned counsel for the appellant has then mainly relied on the plan, alleged to be certified by the two Executive Engineers of the MHADA, to show that, in the said plans also, the suit structure is mentioned as '*ground + 4 upper floors*'.

16. Then reliance is also placed on the Electricity Bills to show that the first Electricity Bill is of the year 1961.

17. Thus, in sum and substance, an endeavour is made to submit that the structure is in existence since before the datum date and it was, since beginning, of '*ground + 4 upper floors*'. Even the MHADA Engineers had also sanctioned the plans for repair work of the structure consisting of '*ground + 4 upper floors*' and the funds were also sanctioned for the same from '*MLA Grant*'.

18. Thus, according to learned counsel for the appellant, when, admittedly, the said building is in existence at present, consisting of '*ground + 4 upper floors*' and the Trial Court has also rejected the prayer of respondent No.1-Municipal Corporation for issuing contempt against the appellant for violating the status-quo order, in such situation, the interest of justice requires that the existing suit structure be allowed to continue as it is, thereby restraining respondent No.1-Municipal Corporation from taking any action of demolition of the said structure till the disposal of the Suit, so that, if sufficient opportunity is given to the appellant, the appellant can produce and prove on record the documents to show that earlier structure was also of '*ground + 4 upper floors*' and not only of '*ground + 1 floor*'. Thus, according to learned counsel for the

appellant, this is a fit case where this Court should grant the discretionary relief of interim injunction, restraining respondent No.1-Municipal Corporation from taking any action in pursuance of the impugned notices issued to the appellant for demolition of the existing suit structure.

19. However, as rightly submitted by learned counsel for respondent No.1-Municipal Corporation, this is a fit case where not only such relief is required to be rejected at the threshold itself, but, such practice and novel way adopted by the appellant of carrying out construction, totally in flagrant violation of the rules and regulation of respondent No.1-Municipal Corporation and violating the order of status-quo, continuing with the construction and completing the same and, thereafter, coming to the Court and contending that, as the construction is completed, it needs to be protected, is required to be deprecated and needs to be stopped.

20. The facts of this case, as can be seen from the documents produced on record by respondent No.1-Municipal Corporation, are self-eloquent to the extent of being unequivocal. The documents produced on record by respondent No.1-Municipal Corporation clearly indicate that, since beginning, the suit structure was only of '*ground + 1 floor*'. All the Municipal Tax Assessment Bills and Electricity Bills, which are produced on record, are more than sufficient to, prima facie, show that, the

description of the suit building given therein was of '*ground + 1 floor*' and there were only 11 to 13 tenants in the said property. The Electricity Bills and Municipal Tax Assessment Bills of those tenants are alone produced and could be produced on record. Appellant has not shown, except for the alleged list of the tenants, which is annexed to the Sale Deed, which is a private document, and to the work order, any other material, worth the name, to show that, since beginning, it was a building consisting of '*ground + 4 upper floors*', or, there were 24 tenants residing therein. There is absolutely no iota of evidence on record to that effect.

21. There is also no evidence produced on record by the appellant to show that respondent No.1-Municipal Corporation, which is the only Planning and Sanctioning Authority, has, at any time, permitted the appellant, or, sanctioned the plan for construction of '*ground + 4 upper floors*'.

22. As rightly held by the Trial Court, the entire reliance of the appellant is on the plan, which is certified by the two Executive Engineers of MHADA, on the basis of the alleged certificate issued by the Architect, in which it is stated that the building was of '*ground + 4 upper floors*'. However, in respect thereof, respondent No.1-Municipal Corporation has already lodged complaint against those two Executive Engineers of

MHADA at Colaba Police Station and C.R. No.173/2014 is registered thereon against the two Executive Engineers of the MHADA and the appellant. In the said C.R No.173/2014, the statement of the Architect of MHADA, namely, Vilas G. Kore, is also recorded, in which he has categorically stated that he has not signed on the plan or the letter and someone has misused his name and forged his signature. On the basis of the investigation carried out in the said C.R., Colaba Police has issued letter dated 21st March 2016 stating that it was transpired that the said building was only of '*ground + 1 floor*'. In such situation, even at this prima facie stage also, it is apparent and well spelt out that the plan allegedly certified by the two Executive Engineers of MHADA, cannot be relied upon, as it was obtained fraudulently. It is significant to note that, on the basis thereof, the appellant has not only misguided the MHADA Authorities, obtained work order, but, also misguided the Court and obtained the status-quo order.

23. What is most distressing to note is that on the basis of the said status-quo order, which was binding on the appellant also, the appellant has gone ahead, demolished the existing structure and carried out and completed further construction of four floors. The photographs produced on record by respondent No.1-Municipal Corporation are self-speaking to reveal what was the condition of the suit structure in the year 2014, when

the status-quo order was obtained. It was completely demolished, whereas, now, in the year 2016, when the Officers of respondent No.1-Municipal Corporation visited the suit premises, they found construction of four floors to be complete. Admittedly, there is not a single document under which the appellant has obtained the permission for construction of four floors. The building already existing was also only of '*ground + 1 floor*'. In such situation, it is apparent that whatever construction, which is carried out by the appellant, upto four floors is in breach of the rules and regulations of respondent No.1-Municipal Corporation. It is starkly unauthorized, blatantly illegal and prima facie also in violation of the status-quo order passed by the Trial Court.

24. Needless to state that such illegal and unauthorized construction cannot be protected in any way. Moreover, as pointed out by learned counsel for respondent No.1-Municipal Corporation, the construction carried out is such that it is without plinth and also without usual slabs, but it is only on iron columns. Such construction is hazardous, to say the least, and dangerous to the lives of the occupants and also to the lives of the persons passing nearby or residing adjacent. At-least under the order of the Court, such construction can in no way be protected. Admittedly, this structure is also not occupied and is not in a position to be occupied, as is evident from the photographs dated 19th September 2016 produced

on record by respondent No.1-Municipal Corporation. Therefore, it goes without saying that, when the construction is apparently illegal, carried out in violation of the status-quo order passed by the Court, it is not qualified for protection from this Court.

25. As regards the submission of learned counsel for the appellant that the Notice of Motion and Contempt Petition preferred by respondent No.1-Municipal Corporation, for breach of the status-quo order, are rejected by the Trial Court, the impugned orders passed by the Trial Court reveal that they were rejected it being the prima facie stage and the evidence will be necessary to prove that there was breach of such order, especially, because the contempt proceedings in the nature of Order XXXIX Rule 2A of CPC are having penal consequences, where it is required to be proved strictly so as to take the necessary penal action or criminal action against the contemnor. However, for the purpose of deciding this Appeal from Order in Notice of Motion, prima facie view has to be taken and this prima facie view is unequivocal that the appellant has carried out construction in violation of the order of status-quo and also against the '*Rules and Regulations of the Development*', as prescribed in law. Such construction cannot be protected and hence the impugned order passed by the Trial Court of dismissing the Notice of Motion needs to be upheld and, accordingly, this Appeal from Order stands dismissed with costs.

26. At this stage, learned counsel for the appellant requests this Court to stay the execution and operation of the order passed by this Court for a period of eight weeks from today. He submits that, since the year 2014, when he has filed Suit, till the date, such protection, in the form of the order of status-quo, was in existence and if the construction is demolished, without ensuring that the appellant gets an opportunity to challenge the order of this Court before the Hon'ble Supreme Court, the appellant will suffer irreparable loss. It is also urged that, at present also, the building is not occupied and hence there is no question of any danger to the lives of the persons.

27. Learned counsel for respondent No.1-Municipal Corporation, however, strongly resists this request by submitting that, such protection cannot and should not be granted in the cases of this nature. According to him, when the appellant has, as observed by this Court, violated the very order of status-quo and the construction, which is standing at present, is also dangerous not only to the occupants, who may not be occupying the building, but to the persons residing nearby and the passers-by, such protection should not be extended.

28. In my considered opinion also, this is not a fit case where this Court should extend the protection of status-quo granted by this Court, which is apparently violated and undue benefit of the same is taken by the appellant and when, prima facie also, it can be seen that the authorities, like, MHADA were misrepresented by obtaining the plan certified by forging the signature of the Architect. Hence, this prayer also stands rejected.

29. It is, however, clarified that all the observations made here-in-above are only for the purpose of deciding this Appeal from Order and the Trial Court, or, any other authority should not be swayed or influenced by the observations made here-in-above.

[DR. SHALINI PHANSALKAR-JOSHI, J.]