

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1083 OF 2014
WITH
CIVIL APPLICATION NO.1310 OF 2014
IN
APPEAL FROM ORDER NO.1083 OF 2014
AND
APPEAL FROM ORDER NO.1104 OF 2014
WITH
CIVIL APPLICATION NO.1333 OF 2014
IN
APPEAL FROM ORDER NO.1104 OF 2014***

Smt. Bharati Hasmukh Thakkar ..Appellant/Applicant
Vs.
The Municipal Corporation of Greater
Mumbai ..Respondent/Org. Deft.

....

Mr.Nilesh Ukey i/b M. P. Vashi Associates for the appellant in AO
No.1083/2014 and AO No.1104/2014 and applicant in CAA
No.1310/2014 and CAA No.1333/2014
Mr. A. V. Diwate for the respondent-BMC.

....

***CORAM : N.M. JAMDAR, J.
DATED : 14 MARCH 2016***

P.C.:

. These two appeals are filed by the same appellant and
have been argued together and are being disposed of by a common
order.

2. Appeal from Order No.1083/2014 arises from dismissal of Notice of Motion No.1433/2014 in L.C. Suit No.972/2014 and Appeal from Order No.1104/2014 arises from dismissal of Notice of Motion No.2964/2014 in L.C. Suit No.927/2014. The notices came to be issued to the appellant by the respondent/Municipal Corporation in respect of the structures u/s.351 of the Mumbai Municipal Corporation Act on 31 July 2013. The notices were issued to the “owner/occupier to whosoever it may concern” and one Hasmukhbhai Thakkar. The reply was filed by the appellant stating that said Hasmukhbhai is not the owner, but it is the appellant and certain documents were produced before the authority. Since the representation of the appellant was dismissed by the Corporation, the appellant filed L.C. Suit No.972/2014 challenging the action. Notices of Motion were taken out for protection which have been dismissed by the impugned order dated 21 August 2014.

3. The learned counsel for the appellant firstly contended that the notice is not issued in the name of the appellant and therefore the entire action is bad in law. The said submission in the facts and circumstances of the case cannot be accepted and will not automatically lead to grant of any protective order in favour of the appellant. In the notice, the Corporation has indicated that the notice is issued to the owner/occupier to whomsoever it may concern and name of the husband of the appellant is mentioned.

The appellant stays at the same address was made fully aware of the proceedings as an occupier/owner of the property and has had an adequate opportunity before the Corporation Authority and the Civil Court. The appellant was put to notice that the concerned structure is unauthorized. It is the appellant who has filed the suit and it is the appellant who seeks protective order from this Court in its equity jurisdiction. Therefore this ground will not lead to any protective order unless the appellant establishes that she has prima facie case in her favour.

4. Learned counsel for the appellant relied upon the sanad which was issued by the Competent Authority on 11/7/1960, the property card extracts, receipts paid by the appellant towards taxes which is of September 2007, date not mentioned in the typed copy and agreement for sale dated May 2003, date not mentioned in the typed copy. All these documents were produced before the Authorities of the Corporation, who have also examined the same.

5. As regards assessment records, it does not indicate that the first floor is in existence. As regard the agreements for sale are concerned, these documents though mention first floor, it is not sufficient to indicate that the construction of first floor is legal. The short question is whether the appellant has permission for the first floor or that structure is in existence prior to datum line i.e. 1 April 1962. No permission or sanction plan is placed on record. On

the basis of documents referred above, it is urged that the existence of the first floor is established prior to the datum line. None of these documents unequivocally demonstrates the existence of the first floor. In view of the section 515A of the Mumbai Municipal Corporation Act, scope of the suits challenging the action of the Corporation for demolition of the structure, is extremely limited. Apart from this position, the discretion used by the City Civil Court in absence of any unequivocal document showing legality of the first floor, cannot be said to be perverse. Appeals therefore cannot be entertained and are accordingly dismissed. In view of dismissal of appeals, civil applications do not survive and are disposed of.

(N.M. JAMDAR, J.)