IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.27971 OF 2016

ALONG WITH

CIVIL APPLICATION (STAMP) NO.27973 OF 2016

Shri Abdul Kadar Shaikh.] … Appellant

Versus

The Municipal Corporation of Greater Mumbai,] … Respondents

Mr. J. S. Yadav i/b Mr. B. S. Shukla for Appellant.
Mrs. Madhuri More for Respondent No.1 - BMC.

CORAM :- DR. SHALINI PHANSALKAR-JOSHI, J.
DATE :- OCTOBER 26, 2016

P. C. :-

1. This appeal takes an exception to the order dated 04/10/2016 passed by the City Civil Court, Mumbai, in Notice of Motion No.3830 of 2016 in L. C. Suit No.2221 of 2016 thereby rejecting ad-interim relief of injunction as sought by the appellant restraining the respondent - Municipal Corporation from taking any action like demolition of the suit premises in pursuance of the notice dated 19/09/2016 issued under Section 314 of the BMC Act.

2. The submission of the learned Counsel for appellant is that the appellant is in use, occupation and possession of the shop premises admeasuring 6' X 8' made of patra sheet wall and AC sheet roof situated at Opp. Sanskar Building, near CGS Colony, Hirachand Desai Road, Ghatkopar (West), Mumbai - 400 086. The suit premises are also censused and photo-pass is issued. As such according to the appellant, the structure of the building needs to be protected. The respondent - Municipal Corporation cannot remove or demolish the same. However, by virtue of the notice under Section 314 of the BMC Act dated 19/09/2016, the respondent - Municipal Corporation is going to take action of demolition. It is urged that the various documents were produced by the appellant to show that the suit structure is in existence since prior to the datum line 17/04/1962. However, the Municipal Corporation has wrongly taken the datum line as 01/04/1995. It is urged that in the final order passed by the Designated Officer of the Municipal Corporation on 27/09/2016, the documents produced by the appellant were not at all properly considered. Even the Trial Court has not considered those documents and has refused relief of ad-interim injunction to the appellant. Hence it is urged that the appellant be granted limited protection for agitating before the Trial Court as the Notice of Motion is still pending.

3. However, as per the learned Counsel for respondent, no fault can be found in the final order passed by the Designated Officer on 27/09/2016. He has considered the documents produced on

record by the appellant. First document was acknowledgment of slum dwellers survey 1990 in which the address of the appellant is not reflected. It also does not prove authorization and the existence of the suit structure and therefore, the said document cannot be of any help to the appellant. The second document, as relied upon by the appellant, is the receipt dated 26/03/1994 and the application dated 27/04/1994 to the Ward Officer, 'N' Ward, and the said documents are also not helpful to prove the legality or validity of the suit structure. Further documents produced on record are two electricity bills for the month of April 1994 and May 1998. Again, the documents do not specify that the existence suit structure and they also cannot be called as authenticated and valid construction of the suit structure. The only document which remained is copy of slum dwellers survey 2000. However, as can be seen from the photographs which are produced on record by the respondent - Municipal Corporation, in the first place, it is not a slum area and secondly, the photographs show that the structure is clearly on the footpath. The appellant cannot seek protection especially when the said suit structure is appearing on the footpath and thereby causing lots of inconvenience and hardship to the public at large.

4. As regards the contention of the appellant that datum line applied is not correct, it is submitted by the learned Counsel for respondent that as the suit structure is on the footpath beyond the slum area, there is no question of applying the datum line of 17/04/1962.

5. In view thereof, there is absolutely no substance in the contention raised by the appellant. The impugned order rejecting ad-interim relief of injunction cannot be faulted with. The discretion exercised by the Trial Court is just and proper. No interference is warranted therein. The appeal, therefore, holds no merits and stands dismissed.

6. In view of the above, Civil Application (Stamp) No.27973 of 2016 does not survive and stands disposed of.

(DR.SHALINI PHANSALKAR-JOSHI, J.)