

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.979 OF 2016
IN
NOTICE OF MOTION NO.1186 OF 2016
IN
L.C. SUIT NO.375 OF 2016

Kuniyil Kumar Shankar	]	
Age : 75 years, Occ.: Business,	]	
Indian Inhabitant of Mumbai	]	
Having address at Tiwari Chawl,	]	
Ram Mandir Road, Goregaon (West),	]	 Appellant /
Mumbai – 400 092.	]	[Ors. Plaintiff]

Versus

Municipal Corporation of Greater Mumbai,	]	
A Body incorporated under the provisions	]	
of MMC Act, 1888, Maharashtra Bhuvan,	]	 Respondent
Mahapalika Marg, Mumbai – 400 001.	]	[Org. Defendant]

Mr. G.S. Godbole, Sr. Advocate, i/by Mr. Anil R. Mishra, for the Appellant.

Mr. Suresh S. Pakale, a/w. Mrs. Madhuri More, for the Respondent-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 20TH OCTOBER 2016.

ORAL JUDGMENT :

1. This appeal takes an exception to the Judgment and Order dated 8th September 2016 passed by the City Civil Court, Dindoshi, Borivali

Division, Mumbai in L.C. Suit No.375 of 2016, thereby dismissing the Notice of Motion No.1186 of 2016 filed therein.

2. The said Notice of Motion was preferred by the appellant-original plaintiff seeking relief of interim injunction restraining the respondent-Municipal Corporation from demolishing the suit premises without providing permanent alternate accommodation. It is submitted by the appellant that he is in possession of the commercial premises bearing I.D. No.107, admeasuring 426.5 sq.ft., constructed of bricks, masonry wall and A.C. sheet roof, situate at Tiwari Chawl, on the land bearing C.T.S. No.33-B. His possession is that of a tenant and the suit premises are in existence since prior to the year 1961-62. The land below the suit premises is a private land. According to the appellant, he is paying the rent regularly to the landlord and, therefore, respondent-Municipal Corporation has no right to evict him from the possession of the suit premises without following the due process of law. It is contended that the respondent-Municipal Corporation has, however, issued notice to him on 25th July 2011 informing him that, for the project of '*Road Over Bridge at Jogeshwari, Mumbai*' the land below the suit premises is required and hence, the appellant should produce the documents proving his eligibility for getting permanent alternate accommodation under the resettlement and rehabilitation policy of the Maharashtra Urban Transport Project. It

was further informed to him that, if he fails to produce the documents showing his eligibility, the suit premises will be demolished. According to the appellant, immediately he has produced relevant documents. However, those documents were not given due importance and as a result thereof, he apprehends that the necessary action of demolition of the suit premises would be taken by the respondent-Municipal Corporation, without providing him permanent alternate accommodation. Hence, he approached the Trial Court by filing Suit along with Notice of Motion seeking relief of interim injunction, as stated above.

3. The respondent-Municipal Corporation has resisted the said Notice of Motion by contending, *inter alia*, that the suit premises are unauthorized, illegal and not in existence since prior to the datum line. It was further submitted, by way of an affidavit-in-reply of the Sub-Engineer Mr. S.R. Bhojane, that the appellant was, totally, claiming possession over the three structures bearing I.D. Nos.108 and 116 and the suit structure bearing I.D. No.107. As regards the other two structures bearing I.D. Nos.108 and 116, as the appellant was found in possession of the valid documents, permanent alternate accommodation was allotted to him. However, so far as the suit structure bearing I.D. No.107 was concerned, the appellant has failed to justify his eligibility for the same. The only documents which he has relied upon were the Rent Deed and Rent

Receipts. However, on that basis, the existence of the suit structure since prior to the datum line or possession of the appellant therein was not proved and hence his claim for permanent alternate accommodation in respect of the suit structure bearing I.D. No.107 was not allowed.

4. It was further submitted that the land below the suit structure, bearing I.D. No.107, is urgently required for the project of '*Road Over Bridge at Jogeshwari (North)*' and the suit structure bearing I.D. No.107 of the appellant is causing obstruction to the said project. It was further stated that in the Writ Petition filed by the landlord, bearing No.359 of 2016, this Court, vide its order dated 17th March 2016, has rejected all the contentions raised by him. It is urged that the appellant, who is claiming to be the tenant over the suit structure of the landlord, whose Writ Petition is already dismissed, now cannot have any right to remain in possession thereof. On account of this suit structure only, the public project is obstructed and which is causing lot of inconvenience and hardship to the public at large and, therefore, it was contended that the balance of inconvenience and irreparable loss do not lie in favour of the appellant, nor is he having any prima facie case. Hence, his Notice of Motion needs to be dismissed.

5. The Trial Court heard learned counsels for both the parties on this

Notice of Motion and, vide its impugned order, was pleased to dismiss the same holding that, apparently, the appellant has failed to make out prima facie case for getting permanent alternate accommodation. Moreover, even, ultimately, if he succeeds in the Suit, he will get permanent alternate accommodation, but, at this stage, allowing the suit structure to stand at that situation, thereby delaying public project, more hardship and inconvenience will be caused to the public at large.

6. This Judgment and Order of the Trial Court is challenged in this Appeal by learned senior counsel for the appellant by submitting that, in paragraph No.5 of the impugned Judgment and Order, the Trial Court has clearly held that, as per the admitted position, the suit premises is on the private land belonging to a person by name Ramkishore Tiwari and his family. It is urged that, when any structure standing on a private land is to be demolished for acquiring possession of the land below the said structure, it is incumbent on the respondent-Municipal Corporation to initiate the process under the Land Acquisition Act, 1894. However, the Trial Court, according to learned senior counsel for the appellant, has relied upon the MUDP Policy of the Government, which is, more or less, a Government Resolution and cannot acquire the status of the 'Statute', and rejected the appellant's claim for permanent alternate accommodation and also for the relief of interim injunction. Learned senior counsel for the

appellant has drawn attention of this Court to the observations made by the Trial Court in paragraph No.7 of its Judgment and Order, which refers to the '*Resettlement and Rehabilitation Policy for Mumbai Urban Transport Project*', which, the Trial Court has considered to be as an alternate process for acquisition of the property, which is required to be followed under the Land Acquisition Act, 1894. According to learned senior counsel for the appellant, the Government Resolution or the Policy cannot be a substitute for the Statute or any Act and, therefore, the Trial Court has committed a grave error in coming to this conclusion.

7. Secondly, it is submitted that, the Trial Court has considered the provisions of Sections 298 and 299 of the Mumbai Municipal Corporation Act, 1888, and held that the said provisions cannot be made applicable to the suit structure. By relying on the authority of ***Indian City Properties Ltd. and Anr. Vs. Municipal Commissioner of Greater Bombay and Anr., (2005) 6 SCC 417***, it is urged that the suit structure definitely falls within the definition of the term "*building and other such structures*", as held in this authority, on that score also, the Trial Court has committed an error.

8. Lastly, learned counsel for the appellant has submitted that, even assuming that the suit structure is required for the public project, at the

cost of public cause, the individual's rights cannot be sacrificed and appellant cannot be dispossessed from the suit structure without providing him the permanent alternate accommodation.

9. Per contra, learned counsel for the respondent-Municipal Corporation has supported the impugned Judgment and Order passed by the Trial Court by pointing out that the appellant was given necessary opportunity, earlier to filing of the Suit and even after filing of the Suit, by the Trial Court to produce requisite documents to prove his eligibility for getting permanent alternate accommodation. Appellant has, however, failed to do so. Hence, now he cannot contend that he will not vacate the suit structure or suit structure should not be demolished, unless the permanent alternate accommodation is provided to him.

10. After considering the submissions advanced at Bar by learned counsels for the parties, the important fact, which emerges, as admitted on record, is that the land below the suit structure is required for the public project of '*Road Over Bridge*'. It is pertinent to note that the landlord of the premises, on which the suit structure is standing, has already approached this Court in Writ Petition No.359 of 2016 and this Court has, after considering all the aspects of his case regarding compensation, held that the matter relating to compensation can be decided at the subsequent

date pending the Writ Petition. It was submitted that 50% of the compensation is already deposited by the respondent-Municipal Corporation in the Court and, accordingly, this Court, in the said Writ Petition, has held that, *“taking into consideration the facts of the case and, more particularly, the fact that the completion of the construction of the fly over is stalled only on account of non-removal of the suit structure, the interim order granted was liable to be vacated”*. It was also observed that, *“the respondent-Municipal Corporation is suffering a loss of Rs.3 crores per month on account of the delay in completion of the project. Apart from that, there is a heavy congestion of traffic in the ulterior roads and this fly over will reduce that congestion, as it will connect Goregaon East and West”*. This Court has also considered the problems and inconveniences faced by the commuters and held that it is utmost essential that such ‘Over Road Bridge’ is necessary to be constructed at the earliest. Thus, this Court has already applied its mind in the Writ Petition and had rejected the claim of the landlord for retaining the suit structure on the said land.

11. It is significant to note that, now, after the landlord has become unsuccessful in his attempt to retain the land below the suit structure, it is the appellant-tenant, who is coming before the Court and, that too, without joining or impleading the landlord as party to the Suit. Needless to state,

that the landlord is bound to support him or this Suit may be a one more ploy on the part of the landlord to retain the suit structure and possession of the land below it.

12. Despite everything, the appellant was given an opportunity to prove that he is eligible to get permanent alternate accommodation. The appellant was given opportunity two times, one, before filing of the Suit and, another, after filing of the Suit, by the Trial Court. However, the appellant has failed to produce requisite documents, like, the assessment bill, electricity bill, telephone bill, photo-pass, electoral roll, ration card etc. to show that his possession is since long, even prior to the datum line. He has only produced the Rent Deed and the Rent Receipts. Those documents cannot prove the legality and validity of the suit structure or its existence prior to the datum line. It is especially so, because, when the landlord has failed to achieve the object, now the tenant has filed the Suit and, therefore, the Rent Deed and Rent Receipts cannot be of any help, which have been prepared in between the tenant and the landlord. These being the private documents, they cannot prove the appellant's entitlement, prima facie, to get the permanent alternate accommodation.

13. It is pertinent to note that, so far as other two structures, namely, I.D. Nos.108 and 116, when the documents produced on record proved

the eligibility of the appellant to get the permanent alternate accommodation, he has been allotted such accommodation, but, now, when he has failed to prove his eligibility, he cannot insist that, unless such permanent alternate accommodation is allotted to him, he should not be removed or the suit structure should not be demolished. Moreover, whether the appellant is still entitled to get permanent alternate accommodation from the respondent-Municipal Corporation, that issue will be finalized again by this Court at the time of trial. Therefore, ultimately, at the conclusion of the suit, if it is found that the appellant is entitled to get permanent alternate accommodation on the basis of various legal issues raised by him or some more documents, which he may produce, then he will be allotted such permanent alternate accommodation, but, at this stage, when, *prima facie*, he has failed to prove his entitlement, then, the Trial Court has rightly held that he cannot retain the suit structure, which is causing obstruction to the public project of the '*Road Over Bridge*'.

14. As to the submission of learned senior counsel for the appellant that project of '*Road Over Bridge*' is already completed, the photographs produced on record by the respondent-Municipal Corporation show that it is the appellant's structure, which is causing obstructions to the traffic on '*Road Over Bridge*', and, therefore, mere completion of the said project will not protect the suit structure of the appellant; especially, when the

possession of the said land is required for reducing the inconvenience, which is presently being caused to the commuters travelling on that road. Even otherwise also, when the appellant has, prima facie, failed to prove his eligibility for permanent alternate accommodation, he has no right to retain possession of the suit premises, merely on the ground that his Suit is pending in the Court.

15. As stated above, the appellant is also not likely to suffer any loss, because, ultimately, he will get the permanent alternate accommodation, if, at the time of trial, he proves his eligibility, but, at this stage, if his structure is allowed to be remained on the site, then, as observed by the Trial Court, it is affecting and will keep on affecting the interest of the public at large and, therefore, it has become utmost essential not to grant such relief of interim injunction to the appellant.

16. In my considered opinion, the Trial Court has rightly considered all the aspects and held that, looked at it from any angle, the appellant cannot become entitled for the relief of interim injunction, as claimed by him. As to the authority relied upon by learned counsel for the appellant that of ***Indian City Properties Ltd. (supra)***, now whether the suit structure is covered under the definition of the term “*building or other such structure*” will be considered at the time of trial, but, for the present, there

is nothing to prove the entitlement of the appellant for the permanent alternate accommodation.

17. The net result is that, no ground is made out to interfere in the discretion exercised by the Trial Court, when the scope of the Appeal against Order of the discretionary nature is limited and when the view taken by the Trial Court is found to be legal and correct. The Appeal, therefore, holds no merit; hence, stands dismissed.

18. In view of the above, Civil Application No.1237 of 2016 pending in the Appeal no more survives and the same is, accordingly, disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]