

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.29277 OF 2016

ALONG WITH

CIVIL APPLICATION (STAMP) NO.29281 OF 2016

Mr. Haji Kasam Ghaneria.	]	
Residing at Building No.35/37, Nishanpada,	]	
X Lane, Mumbai - 400 009.	]	... Appellant

Versus

1. The Municipal Corporation of Greater	]	
Bombay.	]	
Office at Brihan Mumbai Mahanagar Palika	]	
Municipal Head Office, Mahapalika Marg,	]	
Fort, Mumbai - 400 001.	]	
2. Assistant Municipal Commissioner,	]	
'B' Ward, Babulnath, Tank Cross Road,	]	
Mumbai - 400 009.	]	... Respondents

Mr. Satish R. Mishra for Appellant.

Mr. S. Pakale a/w Mrs. Madhuri More for Respondents - BMC.

CORAM :- DR. SHALINI PHANSALKAR-JOSHI, J.

DATE :- OCTOBER 26, 2016

JUDGMENT :-

1. This appeal is preferred by the original plaintiff challenging the order dated 01/10/2016 passed by the City Civil Court, Mumbai, thereby rejecting the draft Notice of Motion filed in Suit Stamp No.9382 of 2016.

2. As per the case of the appellant, he is the owner of the building no.35/37/39, Nishanpada, X-Lane, Mumbai - 400 099. The said building is occupied by 22 tenants, all are residing along with their family members. As the building was in dilapidated condition, the appellant made various applications before the MHADA for obtaining permission for repair work of the building. In the year 2006, the appellant received such permission. However, the appellant failed to repair the said building due to financial crisis. Hence, the appellant made application on 10/10/2015 for carrying out the repairs and accordingly started the repair work in respect of the said building. However various notices came to be issued to the appellant by the Municipal Corporation calling upon him to show cause as to why the construction carried out by him should not be demolished on the count of it being unauthorized and illegal. The last notice was received by him on 09/04/2016 under Section 354(A) of MMC Act, 1888. The apprehension of the appellant is that the respondent - Municipal Corporation may demolish the said building pursuant to the notice and hence he approached the Trial Court seeking relief of permanent injunction.

3. Along with the suit, the appellant has filed a draft Notice of Motion seeking the relief of interim injunction.

4. This notice of motion came to be resisted by the respondent - Municipal Corporation by filing affidavit-in-reply of its Junior Engineer Mr. Vinod Ghare contending, *inter alia*, that the

appellant had carried out totally illegal and unauthorized construction in respect of which the complaints were received and hence the inspection was taken by the staff on 08/04/2016. At that time, it was noticed that the construction was carried out by the appellant without obtaining any permission from the competent authority. Hence the appellant was called upon to show cause within 24 hours. However, the appellant failed to do so. It is submitted by the respondent - Municipal Corporation that prior to filing of the present suit, the appellant has filed another suit bearing no.BCCC Suit No.783 of 2016 in respect of same suit property for challenging first stop work notice dated 02/04/2016 issued under Section 354(A) of the BMC Act. At the time of arguments on ad-interim relief, the appellant sought time to file reply to the notice and the documents. Accordingly, the Court granted time. However, the appellant failed to submit the documents and reply to notice. Again the appellant approached the Trial Court by filing Suit No.905 of 2016 for seeking permission and extension to file documents. The Trial Court rejected the said request of the appellant and after hearing learned Counsel for both the sides, rejected the prayer of ad-interim relief vide its order dated 22/04/2016. It is submitted by the respondent - Municipal Corporation that these material facts were suppressed by the appellant that the appellant had earlier challenged the notice dated 02/04/2016 and the order passed thereon by the Designated Officer on 16/04/2016. It is submitted that at that time, the unauthorized reconstruction of the building was of ground + three floors and further vertical extension by RSJ frameworks.

5. It is urged that the respondent had also earlier issued notice dated 30/10/2015 under Section 354 (A) of the BMC Act and second notice dated 30/01/2016. Third stop work notice was issued on 15/03/2016, the 4th stop work notice was issued on 30/03/2016, 5th stop work notice was issued on 20/04/2016 and the 6th stop work notice was issued on 09/04/2016.

6. Pursuant to these stop work notices, the respondent demolished the suit structure four times i.e. first demolition took place on 02/04/2016, second demolition took place on 21/04/2016, third demolish took place on 26/04/2016 and 27/04/2016 and the fourth demolition was carried out on 04/06/2016. It is submitted that all these demolitions were suppressed by the appellant from the Trial Court and this Court. According to the respondent, the appellant is a habitual in indulging in the activity of reconstruction of unauthorized work. Notice under Section 52(43) of the MRTP Act was also issued to the appellant on 01/12/2015 and on 13/06/2016 for unauthorized construction. It is urged that thereafter the officer of the respondent - Municipal Corporation visited the suit site on 16/04/2016 and 17/04/2016 and observed that the appellant had carried out unauthorized construction up to ground + 7 floors by using RSJ section work and ladi coba and ladi slab. Again the respondent - Municipal Corporation carried out demolition of 7th floor. However, thereafter, the appellant continued the unauthorized construction up to 10th and 11th floors. Hence the demolition of the said construction took place on 21/04/2016 and 26/04/2016.

7. In support of these contentions, the respondent had produced on record all the stop work notices and also the demolition orders to show that the demolitions were carried out with the help of necessary police assistance. The photographs are also produced which are annexed at pages 62 to 82 of the paper-book.

8. Thus, all these documents produced on record by the respondent - Municipal Corporation are, in the considered opinion of this Court, more than sufficient and speak for themselves to show that despite repeated actions of issuance of stop work notices and carrying out demolitions of the unauthorized construction, the appellant is bent upon indulging in the same activity and proceeding with the illegal and unauthorized construction. It is pertinent to note that when the first stop work notice was issued to the appellant, the construction was ground + 3 floors and as can be seen from the subsequent work notices, the demolition of unauthorized structure took place up to 10th and 11th floors. This fact clearly shows that the appellant has scant regard for law and order and is not deterred even by the drastic action of demolition taken by the respondent - Municipal Corporation. Not a single document is produced to show that the appellant had obtained the requisite permission for carrying out such construction of ground + 11 floors.

9. It also seems to be the conduct of the appellant to suppress from the Court the material facts of filing earlier suits, receipts of stop work notices and the action of demolition taken by the

Municipal Corporation and approach the Court for the relief of interim injunction. In my considered opinion, therefore, there was absolutely no reason for the Trial Court even to consider the prayer and to grant the equitable relief of injunction as sought by the appellant, as the conduct of appellant shows utter disregard to the law and order and to the legal machinery and is indulging in the unauthorized and illegal construction. There is absolutely no merits in the appeal. The appeal, therefore, holds no merits and hence stands dismissed with costs.

10. In view of dismissal of the appeal, as the Civil Application has become infructuous, the same also stands disposed of.

(DR.SHALINI PHANSALKAR-JOSHI, J.)