

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order NO. 354 OF 2015
with
Civil Application No.454 of 2015

Mr. Pravin Viraji Solanki ...Appellant
Versus
Municipal Corporation Of Greater Mumbai ...Respondent

Mr.Drupat S.Patil, for the Appellant.
Mr.S.K.Sonawane with Mr.Diwate, for the Respondent-BMC.
Mr.S.K.Navaghare, Asstt. Engineer (B & F) E-Ward present.
Mr.Suraj Jadhav, Junior Engineer (B& F) E-Ward present.

CORAM: G. S. KULKARNI, J.
DATED: 29th April, 2016

PC:-

1. Heard the learned Counsel for the parties.
2. By this Appeal the Appellant-Plaintiff has challenged the order dated 30th October,2014 passed by the learned Judge City Civil Court, Mumbai, in Notice of Motion No.1563 of 2011 in L.C.Suit No.1424 of 2011 by which the appellants 's Notice of Motion seeking following reliefs came to be rejected :- -

“(a) Pending hearing and final disposal of this Suit, this Honourable Court be pleased to issue order of permanent injunction restraining the Defendants, their servants, agents, officers, employees, representatives from taking any action in respect of Room No.8A, Jyodiawala Estates, Bawan Chawl, R.B.Marg, Mumbai-400033 [hereinafter referred to as the suit premises] or part of the suit premises and as described in the notice dated 23-03-2011 under No.E/BF/351/2518/10-

11 under S/351 of the M.M.C.Act, to submit in writing the copies of evidences of its existence within the stipulated period failing which the Corporation would remove the structure described in the said notice and that the applicant would be liable for prosecution under S.475 of the M.M.C.Act and final notice dated 21-05-2011 under even number [hereinafter referred to as the said work for brevity purpose] a copy of which is annexed to the Plaint and marked Exh.A.

(b) Ad-interim reliefs in terms clause (a) herein above.

(c) That the Plaintiffs be awarded the cost of this notice of motion.

(d) Such further and other reliefs be granted to the Plaintiffs as the nature and circumstances of the case may warrant.”

3. The facts are in a narrow compass. The Municipal Corporation issued notice to the Appellant under Section 351 of the Mumbai Municipal Corporation Act on 23rd March,2011 calling upon one Mr.Kishor Solanki to show cause as to why the suit structure shall not be demolished being an unauthorised and illegal structure. The said show cause notice came to be replied by the Plaintiff by his letter dated 1st April,2011 wherein the Plaintiff stated that his brother Mr.Kishor Solanki and in whose name the notice was addressed has expired on 17th February,2004 leaving behind the Plaintiff who is his brother and other family members. The notice was thus accepted by the appellants. The Plaintiff in this reply stated that the room in question was a private

property and rent was being paid to the landlord since prior to 1988. In support of this reply to the show cause notice, the Plaintiff relied upon the rent receipts from July,1988 and 1989 to 1997 and upto January,2010. The Plaintiff also relied on electricity bills from the year 1996 and some bills of subsequent years upto 2011 and other documents namely ration card dated 21st May,1997 and 15th October,1999, and copy of “P” form for supply of water dated 7th April,1997, counterfoil of census application from of the year 2000 and a death certificate of brother dated 17th February,2004. It was categorically stated that the structure under reference is existing prior to 1988 which is entitled for protection as per the policy. At the same time as to under what policy of the Government, the structure would be protected, was not spelt out, whether the structure falls in a notified slum area was also not indicated. Moreover, a categorical statement is made in the reply that the suit structure stands on a private property.

4. The Designated Officer of the Municipal Corporation taking into consideration all these documents passed an order dated 21st May,2011. A perusal of this order shows that each and every document which was submitted on behalf of the Plaintiff, was taken into consideration. The order records that the documents submitted on behalf of the Plaintiff cannot be accepted as the proof of legality of the notice

structure as no satisfactory and conclusive proof/documentary evidence is produced to prove existence of the structure prior to datum line dated 17th April, 1964 so as to subject the suit structure as a tolerable residential structure. It was further observed that there was no other material to show that the notice structure was authorized one and constructed as per the plans approved by Executive Engineer (Building Proposal) City or by any other competent authority. It was, therefore, held that the structure is unauthorized and accordingly the Plaintiff was directed to remove the suit structure within fifteen days from receipt of the letter of the said order, failing which the same would be demolished by the authorities of the Municipal Corporation.

5. The Appellant-Plaintiff accordingly approached the trial Court in the said suit and also filed the Notice of Motion in question seeking the above reliefs of injunction against the Municipal Corporation. By the impugned order the learned Judge considering the rival submissions and the documents as placed on record for the reasons which are set out in detail in the impugned order has dismissed the Notice of Motion. Learned Counsel for the Appellant has made three fold submissions. The first submission is on the basis of a statement which is made on behalf of the Municipal Corporation in the written statement filed before the City Civil Court and more particularly in sub-para (d) of paragraph 4 appearing at

page 37 of the paper book where the Corporation has stated about the remarks of the assessment in regard to the suit structure. It is stated that the property was for the first time assessed in the name of Himmatlal Kantilal and Sasumati wife of Arvind K.Jaiswal and daughter of Kantilal Nahalchand. It was further stated that three sheds are assessed for sweepers and a copy of the assessment report was annexed to the said written statement. On the basis of these averments as made on behalf of the Corporation in the written statement, the learned Counsel appearing for the Appellant submits that the suit structure is authorised and it is already assessed by the Corporation and thus legal.

6. Having perused the material as placed on record in my opinion, the submission is not well founded and this is for the reason that the learned Counsel for the Appellant is not in a position to point out that the above averments which are made by the Municipal Corporation pertain to the very structure which is in possession of the Appellant and which is questioned by issuing impugned notice under Section 351 of the Mumbai Municipal Corporation Act. Secondly, the Appellant nowhere in the plaint has averred that he has come into possession of this structure from the said person Himmatlal Kantilal and Sasumati wife of Arvind K.Jaiswal and daughter of Kantilal Nahalchand. From perusal of the notice under Section 351 as also taking into consideration the order passed by the

Municipal Corporation and the specific averments made in sub-para (d) of paragraph (4) of the written statement, it is quite clear that the Appellant is not in a position to relate this averment or bring any material to show that the assessment was in respect of the suit structure or that it was in existence prior to the datum line. This certainly cannot be overlooked. In fact, neither in the reply to the show cause notice nor in the suit which is filed by the Appellant, the Appellant has produced any sanctioned plan or any permission of any authority to show that the structure is illegal.

7. The second contention as urged on behalf of the Appellant is that a notice under Section 351 of the M.M.C.Act was addressed to Mr.Kishor Solanki and, therefore, same would become bad as not addressed to the Plaintiff. This submission is again without any basis as the Plaintiff in the first place accepted this show cause notice. Thereafter the plaintiff has replied the show cause notice. Further the plaintiff has submitted all the documents on the basis that he is in possession of the said structure and that he justified the legality of the said structure without any demur. It is not the case of the Appellant that this notice was bad because it was issued in the name of Kishor Solanki and that ought to have been withdrawn. This contention therefore needs to be noted only to be rejected.

8. The learned Counsel for the Appellant would thereafter contend referring to paragraph 7 of the impugned order to submit that the order is erroneous as it fails to take into consideration various documents submitted by the Appellant and that there is no discussion. This contention also cannot be accepted taking into consideration the observations of the learned Judge in paragraphs 3, 4 and 5 to which my attention is drawn by the learned Counsel for the Corporation. Appellants cannot read paragraph 7 in isolation. The learned trial Judge in the impugned order has taken into consideration the submission on assessments as made by the Corporation in paragraph 4(d) of the written statement. The learned Judge has observed that a notice has been issued in respect of the construction made by the occupant on the suit property and that the Plaintiff who claimed to be residing on the suit property has not produced a single document as regards the suit structure which would show the legality of the suit structure. The electricity bills, ration card etc. are also examined and they do not show that they are pertaining to the suit structure. It is not the case that the learned Judge has not taken into consideration all this material which was placed for consideration of the learned Judge in deciding the Notice of Motion.

9. Even otherwise taking into consideration the facts of the case and the entire material which is placed on record before the Trial

Court, it is quite clear that the Appellant has miserably failed to produce any material which would show that the suit structure was a authorized structure as approved and sanctioned by the Municipal Corporation. The Plaintiff has also failed to produce any document to show that the suit structure can be rendered as tolerable as there are no documents prior to datum line (before 17th April,1964.) The Plaintiff admittedly has come in occupation in the year 1988. As the Plaintiff has failed to make out any case in the notice of motion,taking into consideration all the above facts, the learned trial Judge has rightly dismissed the Notice of Motion.

10. It may also be noted that though the impugned order came to be passed on 30th October,2014 and this appeal came to filed on 9th December,2014, there was no ad-interim protection which was granted in favour of the Appellant. The learned Counsel for the Municipal Corporation has made submission that with the assistance of the police the Corporation had attempted to demolish the suit structure, however, they could not be successful. It is very surprising as to how the Municipal corporation even with the assistance of police were unable to discharge their obligation and more particularly when the interim relief was rejected in the suit and when there was no protection granted by this Court in this Appeal. This state of affairs on the part of the Municipal Corporation speaks volumes. The reasons as to why the Officers of the Municipal Corporation are not taking any action as regards the suit structure and

their public accountability in that regard needs to be gone into by the Municipal Commissioner. The only inference which can be drawn is that by not resorting to an expeditious action as required to be taken on an illegal structure would result in indirectly helping a person to continue in occupation of an unauthorized structure. It is expected that the Municipal Officers discharge their duties as per law, as also it is expected that in regard to such illegal structures action is required to be taken with utmost expedition by the Municipal Officers in discharge of their public duty and on which they are accountable.

11. In view of the above observations, there is no merit in the appeal from order. It is accordingly rejected with costs quantified at Rs.5000/- to be paid by the appellant to the Maharashtra Legal Services Authority within a period of four weeks from today.

12. As Appeal from order itself is rejected, the Civil Application would not survive and it is accordingly disposed of.

13. Office to place on record of this Appeal, the compliance by the appellants of the orders on payment of cost as directed.

(G. S. KULKARNI,J.)