

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 594 OF 2016**

Smt. Urmila Prakash Thakur

Petitioner

Vs

Shri Vinodkumar F. Chopra and
Ors

.. Respondents

Mr. B.S.Shukla, Advocate for petitioner.

Mr. Sandesh Patil i/b Mr Chintan Y. Shah, Advocate for
Respondents no.1 and 2.

Mr. Mayuresh Surendra Lagu, Advocate for Respondents no. 3
and 4-Corporation.

CORAM : R.G.KETKAR,J.

DATE : 27/04/2016

PC:

1. Heard Mr. B.S.Shukla, learned counsel for the petitioner, Mr Sandesh Patil, learned counsel for respondents no.1 and 2 and Mr. M.S.Lagu, learned counsel for respondents no.3 and 4 at length. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 20.10.2015 passed by the learned District Judge-10, Thane in Misc. Civil Appeal No.156 of 2015. By that order, the learned District Judge allowed the Appeal preferred by the respondents no.1 and 2, hereinafter referred to as 'plaintiffs', and directed both the parties to maintain status quo and follow the directions contained in paragraph 30.

3. Plaintiffs have instituted suit, inter-alia, praying for declaration that notice dated 3.5.2014 issued by respondent no.4 under section 260 (1) of the Maharashtra Municipal Corporations Act, (for short, 'Act') is without any authority and is null, void and illegal, bad in law and not binding upon the plaintiffs; for declaration that the order dated 22.7.2014 passed by the fourth respondent herein, is without jurisdiction and is against the principles of natural justice; for declaration that the suit property is authorised and as per permissions issued by Mire Gram Panchayat; for perpetual injunction restraining the defendants from acting upon the order dated 22.7.2014.

4. During the pendency of the suit, the plaintiffs took out application Exhibit-5 for temporary injunction restraining the defendants from acting upon the order dated 22.7.2014. By order dated 6.8.2015, the learned trial Judge rejected the application. Aggrieved by that order, the plaintiffs preferred Misc. Civil Appeal No.156 of 2015 which is allowed by the impugned order. It is against this order, defendant no.3 has instituted the present petition.

5. Mr. Shukla and Mr. Lagu submitted that the learned District Judge did not deal with objection as regards maintainability of the suit on two grounds based on Sections 487 and 433A of the Act. In paragraph 15, the learned District Judge, though reproduced the contentions advanced by the defendants based on Sections

487 and 433A of the Act, did not deal with these points on the ground that the defendants did not file any application under Order VII, Rule 11 or under Section 9-A of C.P.C. and, therefore, left those points to be considered and decided by the learned trial Judge. They submit that once the objection as to jurisdiction is raised at the time of hearing of the interim application, the Court has no option but to decide the said objection and the same cannot be postponed at the final hearing of the suit.. It was, therefore, submitted that the impugned order may be set aside with direction to the learned District Judge to decide these objections.

6. On the other hand, Mr. Patil submitted that defendant no.3 cannot be heard before the learned District Judge. He submitted that defendant no.3 claims to be owner of Survey No.135, Hissa No.1 (P), Village Kashmira, Taluka and District Thane. Defendant no.3 had instituted Spl. Civil Suit No.699 of 2003 against S/shri Vijay Richhpal Singh and Sham Richhpal Singh for declaration that they have encroached upon open area of the plot of land admeasuring 35'x20' and for removal of that encroachment by way of mandatory injunction. The defendants in that suit filed written statement, inter alia, contending that defendant no.3 herein is not the owner of Survey no.135, Hisaa no.1(P) Village Kashmira, admeasuring 2500 sq.yards. By judgment and decree dated 5.7.2008, the learned trial Judge dismissed the suit. While

dismissing the suit, the learned trial Judge framed Issue no.1 as to whether the plaintiff (defendant no.3 herein) proves her ownership rights and title over the suit property? The learned trial Judge answered that issue in negative.

7. Mr. Patil submitted that defendant no.3 instituted Writ Petition No. 4032 of 2013 in this Court without disclosing dismissal of her suit by the trial Court on 5.7.2008. This Court directed the Corporation to look into the grievances made by defendant no.3 in the petition. If the concerned officer finds that the structures in question have been erected without obtaining a valid permission, necessary action shall be taken for removal of the unauthorised structures in accordance with law. Before taking any action of demolition, affected person shall be given an opportunity of being heard.

8. Mr. Patil submits that in fact, defendant no.3 had no locus to maintain the petition in view of the decision dated 5.7.2008 rendered in Suit No. 699 of 2003. However, defendant no.3 suppressed this fact in that petition and obtained order for settling her private dispute. Defendant no.3 is using machinery of the court for obtaining direction against the Corporation for taking action against unauthorised structures. He submitted that as defendant no.3 has suppressed the decision, she is not entitled to be heard before the learned District Judge. In support of this proposition, he relied upon the decision in the case of Dilip

Singh Vs State of U.P, (2010) 2 SCC 114.

9. On the other hand, Mr. Shukla submitted that the suit instituted by defendant no.3 was dismissed by the trial Court on 5.7.2008. Defendant no.3 has preferred the Appeal against that decision and the said appeal is pending.

10. As observed earlier, basically, the learned District Judge has not dealt with the objections raised by the defendants and in particular Corporation, based on Section 433A and 487 of the Act. Learned District Judge directed the trial Court to decide these aspects. It is settled position in law that once the objection of jurisdiction is raised at the time of hearing of the application for interim relief, the Court has to decide that objection before finally disposing of application for interim relief and cannot be postponed at the final hearing of the suit. In view thereof, impugned order cannot be sustained and is liable to be set aside, thereby, restoring Misc. Civil Appeal No.156 of 2015 preferred by the plaintiffs. Hence the following order:

(i) Impugned order dated 20.10.2015 is set aside and Misc Civil Appeal No.156 of 2015 is restored to the file of the learned District Judge.

(ii) Learned District Judge will decide the objections raised by the Corporation based on section 487 and 433A of the Act and shall not leave it to the decision by the trial Court. All contentions advanced by the parties including those noted in this order shall

be dealt with by the learned District Judge.

(iii) Parties agree that they will appear before the learned District Judge on 13.6.2016 and for that purpose no fresh notice be issued to them. Learned District Judge is requested to dispose of Appeal within four weeks from the date of appearances of the parties.

(iv) During the pendency of the Misc. Civil Appeal, order directing to maintain status quo, is continued as ad-interim order. Continuation of the ad-interim order shall not be construed as an expression of merits either way. Learned District Judge will decide the Appeal on its own merits and in accordance with law.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)