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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.32991 OF 2015

WITH
CIVIL APPLICATION (STAMP) NO.32996 OF 2015
IN
APPEAL FROM ORDER (STAMP) NO.32991 OF 2015

WITH
CIVIL APPLICATION (STAMP) NO.32998 OF 2015
IN
APPEAL FROM ORDER (STAMP) NO.32991 OF 2015

Balakrishnan Madhavan	...Appellant
V/s.	
Municipal Corporation of Gr. Mumbai & Ors.	...Respondents

Mr.S.U. Kamdar, Senior Counsel with Mr.Shardul Singh, Mr.Viral Shukla and Ms.Priti Patel i/b Shukla & Associates for the Appellant.

Mr.J. Reis, Senior Counsel with Mr.N.V. Walawalkar, Senior Counsel, Mr.S.K. Sonawane and Mr.A.V. Diwate for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 12TH JANUARY, 2016.

P.C. :-

1. By this appeal from order, the appellant has impugned the order dated 23rd November, 2015 passed by the learned trial Judge, dismissing the notice of motion filed by the appellant (original plaintiff) *inter-alia* praying for an injunction against the Municipal Corporation from taking any further steps against the appellant and/or

from demolishing the suit structure or dispossessing the plaintiff.

2. The appellant had filed a suit impugning the notices dated 12th October, 2015 and 29th October, 2015 issued by the Municipal Corporation calling upon the appellant to vacate the suit premises.

3. Mr.Kamdar, learned senior counsel for the appellant invited my attention to some of the documents annexed to the appeal paper book and would submit that the appellant is claiming to be in possession of the suit premises having acquired the rights from Mohammed Ali Mohammed who was in possession of the suit premises prior to 1st April, 1962 and was carrying on business. He also invited my attention to the *prima-facie* findings rendered by the learned trial Judge and would submit that though the learned trial Judge has rendered a finding that the appellant was carrying on business since 1962, the learned trial Judge contrary to such finding has held that the action on the part of the Municipal Corporation to offer the alternate premises of 225 sq. ft. in the Municipal market is proper.

4. Pursuant to the liberty granted by this Court, the appellant produced certain documents for perusal of this Court, which were not produced before the Municipal Corporation or before the learned trial Judge pursuant to the notice issued by the Corporation on 24th November, 2015. It is submitted that it was the specific plea of the

appellant in the plaint that the predecessor in title of the appellant of the suit structure was in possession since prior to the cut off date of 1962 and thus the learned trial Court was right in rendering the finding in favour of the appellant.

5. It is submitted by learned senior counsel for the appellant that in any event since the appellant has been carrying on the business of restaurant in the suit premises from several years, the Corporation cannot ask the appellant to shift in the alternate premises of 225 sq. ft. in which the appellant would not be able to carry on any restaurant business efficiently.

6. Mr.Reis and Mr.Walavalkar, learned senior counsel for the Municipal Corporation on the other hand invited my attention to the documents relied upon by the appellant which are forming part of record in the appeal paper book and would submit that none of the documents would even *prima-facie* demonstrate that the appellant was carrying on any business as on the cut off date of 1962. He submits that the documents produced by the appellant were in the name of Mohammed Ali Mohammed. He submits that the original occupant who was alleged to have carried out the business of restaurant in the suit premises has not filed any suit and did not challenge the notices issued by the Municipal Corporation. He submits that the suit structure admittedly falls on the public street and

thus the action taken by the Municipal Corporation in issuing a notice under section 314 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) and under the provisions of M.R.T.P. Act was proper. He submits that all the occupants, except the appellant who were on the said public street have already vacated. He submits that the appellant cannot be allowed to stall the public project on one or other ground raised in the plaint.

7. Insofar as the submission of Mr.Kamdar, learned senior counsel for the appellant that alternate accommodation offered by the Municipal Corporation to the appellant is not suitable accommodation and was being offered on the third floor of the Municipal market is concerned, during the pendency of these proceedings, the Municipal Corporation agreed to make allotment of 225 sq. ft. area in the Municipal market on the ground floor to enable the appellant to carry on the restaurant business. It is submitted that since the predecessor in title of the appellant failed to produce any document to show that the commercial activities were going on in the suit premises prior to the cut off date, the appellant would be eligible only of 225 sq. ft. area and not the larger area mentioned in the circular issued by the Corporation. Learned senior counsel for the Corporation tenders a copy of the allotment letter dated 11th January, 2016 issued by the Municipal Corporation to the appellant granting alternate

accommodation to the appellant in lieu of existing structure which is admeasuring 225 sq. ft. in the Municipal market on plot bearing C.S. No.695, 1.696 & 697 of Mahim Division, situated at Sitladevi Temple Road, Mahim on the ground floor as canvassed by the appellant during the course of argument.

8. Insofar as the additional documents produced before this Court during the course of hearing are concerned, it is submitted by the learned senior counsel for the respondent that even those documents would not indicate that the appellant was carrying on any business in the suit premises on the cut off date and would submit that the appellant would not be eligible for any larger accommodation under the policy framed by the Municipal Corporation.

9. Learned senior counsel also invited my attention to the judgment of the Supreme Court in case of **Mahadeo Savlaram Shelke & Ors. vs. Pune Municipal Corporation & Anr. reported in (1995) 3 SCC 33** and more particularly paragraphs 14 and 15 and would submit that if the plaintiff is seeking an injunction which would delay the execution of a public project, the Court shall not grant any such injunction.

10. A perusal of the record produced by the appellant *prima-facie* indicates that the appellant is claiming rights in the suit property through one Mohammed Ali Mohammed . There is no dispute that the

said Mohammed Ali Mohammed did not file any suit impugning the notices issued by the Municipal Corporation and the order passed thereon. The appellant only has impugned the said notices claimed to be in possession of the suit premises. It is not the case of the appellant that the appellant himself was carrying on business in the suit premises as on the cut off date. A perusal of the record produced before the learned trial Court which is minutely considered by the learned trial Judge does not indicate that the appellant or his predecessor in title was carrying on commercial activities in the suit premises as on the cut off date.

11. Insofar the submission made by learned senior counsel for the appellant that the learned trial Judge has rendered a finding of fact that the appellant was carrying on business in the suit premises as on the cut off date is concerned, in my view such stray observation made by the learned trial Judge at the stage of hearing of the of the notice of motion would not assist the case of the appellant. The appellant will have to establish before the learned trial Judge that the appellant or his predecessor in title was carrying on business in the suit premises as on the cut off date so as to make himself eligible for larger area under the policy framed by the Municipal Corporation.

12. Insofar as the additional documents relied upon by the appellant before this Court which were not produced either before the

Municipal Corporation or before the learned trial Judge is concerned, the appellant is at liberty to rely upon such documents at the time of trial of the suit filed by the appellant. If such documents are proved, the learned trial Judge can consider the same on its own merits.

13. There is no dispute that the land on which the suit structure is constructed is situated on the public street. In my *prima-facie* view, the action initiated by the Municipal Corporation under section 314 of the M.M.C. Act read with M.R.T.P. Act is thus in order and in accordance with law. The structure of the appellant being on the public street is thus not entitled to any protection. The learned trial Judge, in my view, is thus right in rejecting the reliefs prayed by the appellant (original plaintiff).

14. In my *prima-facie* view, since the appellant could not produce any documents before the learned trial Judge to show their eligibility for availing the larger area under the policy framed by the Municipal Corporation, the Municipal Corporation is right in offering the area of 225 sq.ft. as and by way of alternate accommodation under the prevailing policy framed by the Municipal Corporation. In the event of the appellant proving his case before the learned trial Judge for larger area, the learned trial Judge upon considering the evidence placed before him by the appellant as well as by the Municipal Corporation can consider the same.

15. The Supreme Court in case of **Mahadeo Savlaram Shelke** (supra) has laid down the principles to be considered by the Court while considering an application for grant of interim injunction which if granted would delay the public project. It is held by the Supreme Court that it is common experience that injunction normally is asked for and granted to prevent the public authorities or the respondents to proceed with execution of or implementing scheme of public utility or granted contracts for execution thereof. It is also held that the public interest is, therefore, one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction. While exercising discretionary power, the Court should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the Court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. It is held that the Courts in the cases where injunctions are to be granted should necessarily consider the effect on the public purpose thereof and also suitably mould the relief.

16. In my view, the public interest and implementation of a public project is more important than any private interest of a member of public. The suit structure being on the public street, the Municipal

Corporation is entitled to take appropriate action under section 314 of the M.M.C. Act to remove such structure from the public street so as to remove the obstructions from the public street. In my view, no party can be allowed to carry on any unauthorized construction on a public street and if carries out, such structure cannot be protected by the Court which would affect the public project or create any obstruction on the public street. In my view, the principles laid down by the Supreme Court in case of **Mahadeo Savlaram Shelke** (supra) squarely applies to the facts of this case. I am respectfully bound by the principles laid down by the Supreme Court.

17. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has considered all the documents produced by the appellant and has passed a reasoned order and thus does not require any interference by this Court. The appeal is devoid of merits. In view of the allotment letter issued on 11th January, 2016 by the Municipal Corporation offering an area of 225 sq. ft. in the Municipal market on the ground floor, interest of the appellant is protected.

18. I therefore pass the following order :-

- a). The appeal is dismissed. No order as to costs.
- b). In view of the dismissal of the appeal from order, the civil applications do not survive and are accordingly dismissed. No order

as to costs.

c). The appellant is directed to remove himself along with his staff and articles from the suit premises within two weeks from today. If the appellant does not remove himself, his staff and articles lying in the suit premises within two weeks from today, the Municipal Corporation would be at liberty to remove the suit structure and remove the appellant, his staff and articles forcibly and if necessary with the assistance of police.

(R.D. DHANUKA, J.)