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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.33406 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.33533 OF 2015
IN
APPEAL FROM ORDER (STAMP) NO. 33406 OF 2015

Sanjay Bahulal Jain	...Appellant
V/s.	
The Municipal Corporation of Gr. Mumbai	...Respondent

Mr.Bholaprasad Shukla for the Appellant.

Mr.A.V. Diwate for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JANUARY, 2016.

P.C. :-

1. By this appeal from order the appellant has impugned the order dated 7th November, 2011 dismissing the notice of motion filed by the appellant (original plaintiff) *inter-alia* praying for an injunction restraining the respondent from removing and/or demolishing the suit structure pursuant to the notice dated 20th March, 2013 issued under section 354-A of the Mumbai Municipal Corporation Act (MMC Act).

2. Mr.Shukla, learned counsel appearing for the appellant invited my attention to a notice dated 20th March, 2013 issued by the Municipal Corporation under section 354-A of the MMC Act and would

submit that the said notice did not indicate that on the date of issuance of such notice the appellant was carrying on any unauthorized construction. He submits that the loft was already constructed by the previous owner and thus if the Municipal Corporation wanted to issue any notice, the notice could be issued only under section 351 of the MMC Act and not under section 354-A of the MMC Act. He submits that though the appellant did not annexe a copy of the notice issued under section 381 of the MMC Act dated 25th April, 1995, which was issued to Sir Vitthaldas Damodar Thackersey Charitable Trust calling upon the said trust to remove the old broken and corroded water tank which was installed without the permission, the said notice has been annexed to the civil application, which would indicate that the said loft was already in existence as on 25th April, 1995 i.e. prior to the notice dated 20th March, 2013 issued under section 354-A of the MMC Act.

3. It is submitted that the action on the part of the Municipal Corporation in issuing the notice under section 354-A of the MMC Act is thus totally illegal. He submits that the said notice could not have been issued for demolition of the suit structure. In support of this submission, the learned counsel placed reliance on the judgment of the Supreme Court in case of **Muni Suvrat – Swami Jain S.M.P. Sangh vs. Arun Nathuram Gaikwad & Ors,** reported in **(2006) 8**

SCC 590 and more particularly paragraphs 53 and 57 and would submit that the provisions of section 354-A of the MMC Act had nothing to do with the power of demolition.

4. It is submitted by learned counsel for the appellant that the learned designated officer of the Municipal Corporation and the learned trial Judge have rejected the reply filed by the appellant and the notice of motion respectively mechanically. He submits that the respondent did not produce any documents in support of their contention that on the date of issuance of the notice under section 354-A of the MMC Act, the appellant was carrying on any unauthorized construction. In support of this submission, learned counsel placed reliance on a circular issued by the Municipal Corporation in the month of March, 2006.

5. Learned counsel for the respondent on the other hand invited my attention to a notice issued by the Municipal Corporation under section 354-A of the MMC Act and would submit that the said notice itself would indicate that the appellant had unlawfully commenced or was carrying on erection of building / execution of work which were more particularly described in the said notice. He submits that the Municipal Corporation had issued the said notice after inspection of the premises was taken and it was observed that the appellant was carrying on unauthorized construction of loft with

M.S. Girder and ladi coba without valid permission from the competent authority. The Corporation had prepared a panchanama on the same day and had taken photographs.

6. Learned counsel also invited my attention to the impugned order passed by the learned trial Judge and would submit that the learned trial Judge has considered the original photographs dated 20th March, 2013 which clearly indicates that the construction was going on the date when the notice under section 354-A of the MMC Act was issued. He submits that the photographs were taken by the Corporation on the same day. He placed reliance upon the *prima-facie* findings of the learned trial Judge.

7. Insofar as the first submission of the learned counsel for the appellant that since no work was going on in the suit premises on the date of issuance of the notice under section 354-A of the MMC Act, no notice could have been issued by the Municipal Corporation at all under section 354-A of the MMC Act and only a notice under section 351 of the MMC Act could have been issued is concerned, a perusal of the said notice indicates that the Corporation had expressed their satisfaction that the appellant had unlawfully commenced and/or unlawfully carried on unauthorized construction of loft with M.S. Girder and ladi coba without valid permission from the competent authority. I am thus not inclined to accept the submission

of learned counsel for the appellant that the said notice would not indicate that the appellant was carrying on any work as described in the notice on the date of issuance of such notice.

8. The Supreme Court in case of **Muni Suvrat – Swami Jain S.M.P. Sangh** (supra) has held that section 354-A of the MMC Act deals with stop work notice, whereas provisions of section 351 of the MMC Act deals with show cause notice for demolition of the unauthorized construction. A perusal of the notice issued by the Municipal Corporation clearly indicates that by the said notice the Corporation has directed the appellant to stop erection of the said work mentioned in the notice. In my view, the provisions of section 354-A of the MMC Act are clearly attracted to the facts of this case. There is thus no merit in the submissions made by the learned counsel for the appellant that the notice issued under section 354-A of the MMC Act was without jurisdiction. There was no issue of suppression decided by the Supreme Court in case of **Muni Suvrat – Swami Jain S.M.P. Sangh** (supra). The said judgment would assist the case of the Municipal Corporation and not the appellant.

9. Insofar as reliance placed on the notice issued by the Municipal Corporation on 25th April, 1995, which is annexed to the civil application and relied upon for the first time by the appellant is concerned, the said notice appears to have been issued to Sir

Vithaldas Damodar Thackersey Charitable Trust. The said notice would not indicate that in spite of the said notice dated 25th April, 1995 issued to the said Sir Vithaldas Damodar Thackersey Charitable Trust the structure was not demolished.

10. Insofar as the submission of learned counsel for the appellant that the respondent did not produce any document before the learned trial Judge or that the order passed by the designated officer of the Municipal Corporation and the learned trial Judge are passed mechanically is concerned, a perusal of the order passed by the learned trial Court clearly indicates that the learned trial Judge has considered the photographs produced by the respondent, which were taken on 20th March, 2013 and other relevant documents which indicated that the construction was going on on the date of taking such photographs. Three workers were found doing the work in the suit site.

11. I have heard the learned counsel for the appellant and for the Municipal Corporation at length. The appellant could not even demonstrate before this Court that the suit structure was authorized and construction was already completed much prior to the date of issuance of the notice under section 354-A of the MMC Act by the respondent.

12. In my view, no infirmity can be found in the order passed

by the learned trial Judge in dismissing the notice of motion.

13. The appeal from order is devoid of merits and is accordingly dismissed.

14. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

15. At the request of the learned counsel for the appellant, the interim protection granted by the learned trial Court shall continue for a period of four weeks from today on the condition that the appellant shall not carry out any further construction.

(R.D. DHANUKA, J.)