

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1044 OF 2016
and CIVIL APPLICATION NO.1320 OF 2016
in
NOTICE OF MOTION NO.4506 OF 2016
in
L.C.SUIT NO.2684 OF 2016

Jyotirmoy A.Bose Appellant

vs

The Municipal Corpn of Gr.Mumbai & ors .. Respondents

Mr.Chirag Mehta a/w Mr.Rushi Mehta

I/b Mr.J.J.Shah for Appellant

Ms.M.R.Bhoir for BMC

CORAM: G.S.KULKARNI, J

DATE: 15 DECEMBER 2016

P.C.

1. Not on Board. Taken on Board on a praecipe as moved on behalf of the appellant.

2. Heard learned counsel for the appellant and learned counsel for the Municipal Corporation.

3. This appeal is directed against an order dated 13.12.2016 passed by the learned trial Judge in Notice of Motion No.4506 of 2016 in L.C.Suit No.2684 of 2016 whereby the prayers of the appellant/plaintiff for ad interim relief on the said Notice of Motion has been refused.

4. The appellant in the Notice of motion has prayed for a temporary injunction to restrain the Municipal Corporation from undertaking any demolition of the suit structure. Contention of the

appellant/plaintiff was that except a notice under section 354-A of the Mumbai Municipal Corporation Act, 1883 (hereinafter referred to as the said 'Act') there was no notice for demolition issued by the Corporation. It was urged that in the absence of such a notice and opportunity of submitting documents before initiating a demolition action, as resorted by the Municipal Corporation was illegal. My attention has been drawn to the notice under section 354-A of the Act. The notice pertains to 2nd floor, 68/68A, Sheikh Memon Street, Mumbai-400 002 and stop-work which is complained in the notice is of construction of a room with additional bathroom inside in B.M.walls and ladi coba slab on M.S. + section framework without having sanction from competent authority.

5. Grievance of the appellant is that under the notice, the Municipal Corporation would not be authorized to undertake a demolition. The learned trial Judge in the impugned order after hearing learned counsel for the respondent-BMC has made observations that the 5th and 6th floors of the building were demolished on the ground that one of the tenant had approached this Court in a writ petition challenging similar notice under section 354-A of the Act which petition came to be withdrawn as permitted in an order dated 24.11.2016 and that the contention of the

appellant/plaintiff being similar to the one which was urged in the writ petition, the learned trial Judge refused to grant ad-interim relief with a further direction to the respondent-Corporation to file a reply.

6. A perusal of the impugned order does not indicate as to how the Municipal Corporation responded to the contention of the appellant/plaintiff that the law is required to be followed before undertaking demolition and a notice under section 351 ought to have been issued under the Act. Learned counsel for the appellant has drawn my attention to some documents which are placed on record in a compilation of documents to contend that the building is in existence prior to the year 1964. He relies on the commencement certificate dated 13.12.1962. He further relies on certain repair permission which came to be granted on 26.8.1962 as also a notice for repairs of the building which specifically refers to the 5th floor and repairs to be undertaken on the 1st and 4th floor. He also relies on a communication dated 9.8.1982 by the Municipal Corporation of Greater Mumbai to M/s A.A.Khan Architect and Engineer in regard to the proposed renovation to the existing rooms on 5th floor and permission which was accordingly granted. Reliance is also placed on a assessment extract which pertains to the suit structure which

refers to assessment extracts in respect of C.I.shed. Thereafter, my attention is drawn to the suit notice dated 30.3.2016 issued under section 354-A of the Act pertaining to 2nd floor. On the basis of these documents, learned counsel for the appellant contends that the learned trial Judge ought to have granted an opportunity to the appellant and at least for the Municipal authorities to consider the material. It is submitted that these documents ought to have been considered by the learned trial Judge before refusing ad-interim relief. He submitted that as a consequence of the refusal of ad-interim reliefs, the Corporation intends to undertake complete demolition of the building as specifically urged in para 18 of the plaint. On the other hand, learned counsel for the respondent-Municipal Corporation has defended the impugned order and justified the order. The Learned counsel for the respondent submits that the documents which are relied upon by the appellant do not pertain to the suit structure. It is stated that assessment extract does not indicate in any manner that it pertains to the suit structure as it refers only to a C.I.shed. However, as regards issuance of any section 351 notice, the Municipal Corporation has neither placed the correct position on record before the learned trial Judge as also in this Appeal and the respondent-Corporation is not in a position to say

whether due process has been followed as prescribed under the Act.

7. Considering the above facts, in my opinion, it would be appropriate and in the interest of justice, that Notice of Motion No.4506 of 2016 itself be heard and decided by the learned trial Judge. Admittedly, the respondent-Municipal Corporation is yet to file a reply to the Notice of Motion. The appellant/plaintiff is relying on several documents. These documents are required to be responded to by the Corporation. Even before the learned trial Judge at the ad interim stage, the Corporation did not come up with a case for action under section 351 notice of the Act. If that be the case, all these rival contentions would require adjudication in the Notice of motion.

8. Accordingly, I propose to dispose of this Appeal by directing the parties to approach the learned trial Judge and request the learned Judge to take up the Notice of Motion for final hearing after the Municipal Corporation files a reply to the Notice of Motion.

9. The Municipal Corporation is directed to file a reply to the Notice of Motion within a period of four weeks from today with a copy of the same to be served on the appellant well-in-advance. The appellant/plaintiff shall file a rejoinder if so desired, within a period of two weeks thereafter. The learned trial Judge shall make an

endeavour to dispose of the Notice of Motion as expeditiously as possible within a period of 12 weeks after the pleadings are completed. In the meantime, the respondent-Municipal Corporation shall not take any further action of demolition of the suit structure. The appellant-plaintiff shall not undertake any repairs, renovation, or alteration etc in respect of the suit structure and the appellants shall also maintain status-quo as on date. Ordered accordingly.

10. All contentions of the parties on merits of the appeal are expressly kept open.

11. Appeal from Order is accordingly disposed of in above terms. Civil Application No.1320 of 2016 also do not survive and is disposed of.

12. Both learned counsel for the parties shall intimate the oral orders passed by this Court to the concerned Officers of the Municipal Corporation.

{G.S.KULKARNI, J}

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