

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER st. NO.34626 OF 2015

Mr.Indra Bahadur Singh ... Appellant

Vs.

The Municipal Corporation of
Greater Mumbai & Ors. ... Respondents

Mr.V.S. Kapse for the Appellant
Ms.M.R. Bhoir for Respondent Nos.1 and 2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **29th FEBRUARY, 2016**

P.C.:

1. Heard the learned Counsel for the parties.
2. Admit.
3. By consent of the parties, as the issue involved in the appeal is very short, it is taken up and heard finally.
4. In this appeal, the order dated 7.11.2015 rejecting the Notice of Motion No.1881 of 2014 in L.C. Suit No.1489 of 2014 is hereby challenged. The Corporation had given a notice under section 354A dated 12.5.2014 calling upon the plaintiff to stop work and produce the permission for authorisation of the said structure. The suit structure is room No.22 on the ground floor. It is the case of the appellant that the suit

structure was old and may be 100 years old and therefore the appellant purchased the same from the plaintiff No.1 – Rajiv Dayal Bharadwaj by registered agreement of sale dated 5.10.2013 for Rs.6 lacs. It appears that as the said room was in a dilapidated condition, he filed application with the Corporation for its repairs on 30.12.2013 i.e., immediately after he purchased the said room. The Corporation sent him a letter dated 9.1.2014 informing that this is not covered and is beyond the scope of tenantable repairs and so, directed him to take necessary permission from the Executive Engineer (Building Proposal) (City 2), E Ward. It is the case of the appellant that the room was dilapidated and in such a bad condition that he had to repair it. However, the notice u/s 354A of the MMC Act was issued to him by the Corporation. He therefore, filed suit challenging the said notice being L.C. Suit No.1489 of 2014 and in the suit, he filed Notice of Motion No.1881 of 2014 seeking injunction against the Corporation to the said notice. The Motion was rejected by the learned Judge of the City Civil Court at Mumbai on 7.11.2015 and hence, this appeal.

5. Mr.Kapse, the learned Counsel for the appellant, has submitted that the room admeasuring 180 sq.ft. was already in existence. He submitted that the room is of the nature of a shed and there are 2 to 3 sheds in the compound of society. However, the Corporation did not take any action against the other shed owners. However, only against the appellant, notice under section 354A was sent and this amounts to discrimination

against the appellant and so the said notice is to be stopped and the action taken in the notice is to be prevented. He relied on the agreement dated 5.10.2013 and submitted that on the basis of this agreement, the appellant was in possession of the premises and as the suit premises was in bad condition, he moved application with the Corporation for tenantable repairs. The learned Counsel submitted that the learned Judge ought to have considered the fact that earlier a room was in existence and is a very old structure. He further relied on letter dated 9.1.2014 issued by the Corporation and submitted that it was just being tenantable repairs of change of roof and change of floor, wall tiles, painting, plastering and repairing the WC Bath, he proceeded to carry out this repair work. In the course of arguments, he gave an affidavit cum undertaking by the appellant, which is taken on record, to submit that he will restrict the use of the said premises to the old structure admeasuring 180 sq.ft on the ground floor which was numbered as G-22.

6. The learned Counsel for the Respondent – Corporation has opposed the Appeal and the application. She relied on the description of the suit premises mentioned in the plaint. She further submitted that it was a shed. However, the plaintiff under the garb of tenantable repairs, restricted the entire suit room and he also constructed one more floor on it. She produced photographs of the said on-going construction and justified the action of the Corporation in issuing the notice under section 354A.

7. Perused the notice given by the Corporation on 19.5.2014 so also the application made by plaintiff No.2 dated 30.12.2013 for tenantable repairs and the reply given by the Corporation i.e., Assistant Engineer (B&F) A Ward, on 9.1.2014. Perused the photographs. It appears from the record that there was one old structure admeasuring 150 sq.ft. with mud wall. However, the plaintiff No.1 purchased this from plaintiff No.2 by agreement dated 5.10.2013 for Rs.6 lacs and thereafter, he informed the Corporation by letter dated 30.12.2013 that he wanted to carry out repairs, however, the said request was rejected. It was necessary for the appellant to take necessary permission from the Executive Engineer (Building Proposal) (City), E Ward, which is not taken. Despite the requisite permission, the appellant has carried out construction. The photographs disclose that he had demolished the room completely and constructed a new room altogether having one upper floor and staircase to go to the first floor room. This cannot be considered as a tenantable repair. The notice issued under section 354A, in my view, is correct and the order passed by the learned Judge of the City Civil Court, Mumbai cannot be faulted with. I, therefore, maintain the said order. If at all, the appellant wants to give any undertaking, he is directed to approach the trial Court for necessary orders. Appeal and the Civil Application are accordingly dismissed.

8. At this stage, the learned Counsel for the appellant prays for continuation of the ad-interim protection. I am not inclined to grant or continue any protection. Accordingly, the prayer of the learned Counsel is rejected.

(MRIDULA BHATKAR, J.)