

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 1047 OF 2016
with
Civil Application No.1326 of 2016

Mr. Dattatray Genu Jadhav And Anr	...Appellants
<i>Versus</i>	
The Municipal Corporation Of Greater Mumbai	...Respondent

Mr.Pradeep J.Thorat, for the Appellants.

Mrs.Bhoir, for the Corporation-Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 23 DECEMBER 2016

ORDER :

1. Not on board taken on board on a praecipe as moved on behalf of the Appellant.
- 2 Heard Mr.Thorat, learned Counsel for the Appellants and Mrs.Bhoir, learned Counsel for the Respondent-Corporation.
3. This appeal is directed against an order dated 14 December 2016 passed by the learned Judge, City Civil Court at Bombay whereby the

learned Trial Judge has rejected the Notice of Motion No.4622 of 2016 filed by the Appellant in L.C.Suit No.2821 of 2016. By the impugned order, the learned Trial Judge has rejected the prayers for temporary injunction against the Respondent from taking any action under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short 'the Act'). The learned Trial Judge in the impugned order has categorically referred that the Appellant had approached the competent officer of the Municipal Corporation by submitting a proposal for regularization of the unauthorised construction as complained in the Section 351 Notice. The appellant had submitted a regularization proposal on 14 November 2016 and the same is admittedly pending consideration of the Municipal Corporation. The learned Judge, however, considering the provisions of Section 44 and Section 53(3) of the Maharashtra Regional and Town Planning Act (for short 'the MRTP Act') did not find favour in the contention as urged on behalf of the Appellants that the Municipal Corporation needs to stay its hands pending the decision on the proposal. The learned Judge is of the opinion that the action under Section 351 of the Act is an independent action and the provisions of Section 53(3) read with Section 44 of the MRTP Act would not avail to the benefit of the Appellants to contend that the Respondent-Corporation be restrained from

taking any action till the decision on the regularization proposal. Accordingly, the learned Trial Judge has refused the prayers for temporary injunction.

4. Learned Counsel for the Appellants submits that the reasoning as given by the learned Trial Judge in paragraph 3 of the order may not be acceptable in view of the clear provision of Section 53(3) read with Section 44 of the MRTP Act. It is submitted that once the Appellant has accepted that the construction that has been complained is unauthorised, the provisions of Section 44 and 53(3) of the MRTP Act surely become relevant and it is a statutory right which is granted under these provisions to approach the Planning Authority and seek regularization of the unauthorised construction. It is submitted that accordingly, the Appellants have approached the concerned Officer of the Municipal Corporation with an appropriate proposal which needs to be considered in accordance with law.

5. On the other hand learned Counsel for the Corporation supported the order passed by the learned Trial Judge and would submit that the construction as complained in Section 351 Notice is admittedly

unauthorised.

6. Having considered the rival contentions, in my opinion, there is much substance in the contention as urged on behalf of the Appellants. Section 53(3) read with Section 44 of the MRTTP Act are the provisions under which a person who is aggrieved by any action on the part of the planning authority to remove any unauthorised construction, can approach the planning authority with a proposal for regularization of any construction as complained by the planning authority. Once such a proposal is submitted, it becomes a statutory obligation on the part of the Municipal Corporation to consider such an application and pass an appropriate orders as permissible in law taking into consideration the Development Control Regulations. Admittedly, in the facts of the present case, such a proposal is submitted on behalf of the Appellant on 14 November 2016 and so far it is not decided. In these circumstances, there cannot be a situation that on the one hand the Respondent-Corporation is permitted to take action to demolish the unauthorised construction, when the regularization proposal is pending. This would leave the appellant in an incongruant situation if the proposal submitted by the Appellant's proposal succeeds and the Corporation decides to regularise the structures.

In my opinion, this particular consideration has been overlooked by the learned Trial Judge in passing the impugned order. The learned Counsel for the Corporation fairly submits that the proposal as submitted by the Appellant is pending consideration in the Municipal Corporation and would be decided in accordance with law.

7. In the above circumstances, it is in the interest of justice that the impugned order dated 14 December 2016 passed by the learned trial Judge is set aside and the Municipal Corporation is directed to decide the regularization proposal dated 14 November 2016, submitted by the Appellants, in accordance with law within a period of eight weeks from today. In the meantime, the Respondent-Corporation is directed not to take any coercive action under the suit notice dated 7 June 2016 issued by the Municipal Corporation under section 351 of the MMC Act and the consequent order dated 11 November 2016 till the communication of the decision on the said proposal and for a further period of two weeks from the date of communication of the order/decision if an order adverse to Appellants is passed. Ordered accordingly.

8. In view of the above order, the learned Counsel for the

Appellants states that the appellants be permitted to withdraw L.C.Suit No.2821 of 2016. The request is fair and reasonable. The appellants are permitted to withdraw L.C.Suit No.2821 of 2016 which is pending on the file of the learned City Civil Court at Bombay. L.C.Suit No.2821 of 2016 is accordingly disposed of as withdrawn.

9. Office is directed to forward a copy of this order to the Registrar of City Civil Court, Bombay for taking note of disposal of L.C.Suit No.2821 of 2016.

10. Appeal from order is accordingly disposed of in the above terms. No order as to costs.

(G.S.Kulkarni, J.)