

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 219 OF 2017
WITH
CIVIL APPLICATION NO. 295 OF 2017

Umadevi Shashibhushan Pandey ...Appellant

Versus

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

Mr Kamla Kant Pandey, for the Appellant.

Mrs Madhuri More, for Respondent No. 1-MCGM.

CORAM: G.S. PATEL, J

DATED: 14th June 2017

PC:-

1. This Appeal is directed against an order dated 13th December 2016 refusing ad-interim relief. The Plaintiff sought an injunction restraining the Municipal Corporation of Greater Mumbai (“MCGM”) from stopping her activity of a flour mill. This was located in Shop No. 1 admeasuring 480 sq. ft. The Plaintiff claimed to be the only heir of her father Chhabinath Indrajeet Mishra who in turn acquired it from one Ranjit Oza. The Plaintiff’s father apparently had a permit or a license.

2. After his death on 16th August 2003, according to the Plaintiff, there was a family settlement between herself and her two married sisters. She sought to transfer the power permit in 2004 and according to her the MCGM permitted this transfer.

3. There is no dispute that the 2nd Defendant is the landlord of the premises and has not permitted any such transfer to the name of the Plaintiff. Indeed the 2nd Defendant objected to the transfer and the 1st Defendant asked the Plaintiff to produce a no-objection from the landlord, deed or family settlement and the no-objection from other heirs. The landlord's consent and no-objection from other heirs are admittedly not given.

4. The submission before me is that the no-objection of the landlord is never necessary when there is a transfer to the heirs of a deceased tenant. I find it exceedingly difficult to accept this as a proposition at this stage. I am shown some response to an Right to Information enquiry where a MCGM Officer has said that the landlord's no-objection is never sought for a transfer to heirs. That does not mean that it is not required in law. The question is not of a practice that may or may not be followed by the MCGM but whether, the landlord, who has reversionary interest in the property, has consented to a third party, whether or not an heir, exclusively using this premises for a certain purpose and without either the landlord's consent or, failing that, a proper adjudication in a competent court, in a litigation to which the landlord is joined, of the heir's right to so use and occupy the premises.

5. There is also the question of the discretionary power under Section 390 of the Mumbai Municipal Corporation Act and whether the Corporation has discretion to grant or refuse permission. The case of the MCGM is that the permit has not been renewed or has been revoked on the complaint of the landlord.

6. The learned Judge found that the landlord objected in 2015 following which the MCGM initiated enquiries. It was after this process that powers under Section 390 were exercised. It is difficult to fault the learned Judge's finding that in such circumstances there can be no mandatory ad-interim relief to renew the permit or to allow the Plaintiff to continue to run the flour mill (or more accurately to prevent the landlord or the MCGM from preventing the Plaintiff from running the flour mill). It appears that on the basis of an order that says that no coercive steps are to be taken, the Plaintiff/Appellant has been operating his flour mill since December 2016 but without a permit.

7. This is not a state of affairs that can continue indefinitely. Having regard to these circumstances, the best course of action would be to direct the Notice of Motion to be heard peremptorily.

8. Affidavits in Reply shall be filed and served not later than 7th July 2017. Affidavit in Rejoinder to the Notice of Motion to be filed and served on or before 17th July 2017. Neither side will get an extension of time under any circumstances.

9. Parties will appear before the learned Judge on 24th July 2017. The learned Judge will fix a date for final hearing of the Notice of Motion before 18th August 2017.

10. The Notice of Motion will be disposed on its own merits without being influenced either by the interim order or by the present order in Appeal. The Plaintiff will not be entitled to claim any equities on the basis that because of any order of the Court whether in Appeal or otherwise the Plaintiff has been continuing to run the flour mill after the expiry of the permit. In other words, the learned Judge will assess whether, on the facts of the case, the Plaintiff is entitled to an order directing renewal of the flour mill permit, it being an accepted position that such a permit is required.

11. Till then, the ad-interim protection previously granted and which permits the Defendant to continue will, subject to the above, continue.

12. The Appeal from Order and the Civil Application are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)