

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 2202 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 2204 OF 2017

Smt. Manna Selvaraj Gaundar .. Appellant
vs.
The State of Maharashtra & Anr. .. Respondents

Mr. B. S. Shukla for Appellant.
Mr. Yogesh Dabke – AGP for State.

CORAM : M. S. SONAK, J.
DATE: 01 FEBRUARY 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] Mr. Shukla, submits that the suit property is on municipal land and therefore, the authorities under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) have no authority or jurisdiction to issue the impugned notice and initiate any action in respect of the suit structure. He submits that there is no inconsistency with the stand taken by the appellant in the present suit and in the previous suit no. 1414 of 2016, in which, the notice of motion was taken out by the appellant, was in fact allowed by the City Civil Court by its order dated 9 August 2016. Mr. Shukla submits that the appellant is a poor lady and the action of the respondents is at the behest of some goons and

consequently, such action is *mala fide* and deserves to be restrained. On such basis, Mr. Shukla submitted that the learned trial Court erred in rejecting the present notice of motion.

3] Mr. Dabke, learned AGP submits that in previous suit no. 1414 of 2016, the challenge of the appellant was to the notice issued by the municipal authorities under section 351 of the Mumbai Municipal Corporation Act 1888 (MMC Act), therein the appellant contended that the municipal authorities have no jurisdiction or authority to issue notice under section 351 of the MMC Act because the suit structure forms a part of the declared slum area. Mr. Dabke submits that the appellant has raised patently contradictory stand in the earlier suit and in the present suit. In any case, the stand taken up in the present suit is patently false and not borne out by the material on record. On this basis, Mr. Dabke submits that there is no case made out to interfere with the impugned order.

4] Rival contentions now fall for my determination.

5] The appellant had instituted long cause suit no. 1414 of 2016 to question notice under section 151 of the MMC Act. In the said suit, only the Municipal Corporation of Greater Mumbai (MCGM) was impleaded as a defendant. In the said suit, the contention of

the appellant was that the suit structure forms a part of the declared slum area and therefore, the MCGM has no authority to issue notice under section 351 of the MMC Act. Since, today, Mr. Shukla was disputing this position, it is necessary to make reference to what is recorded in paragraphs 4 and 6 of the order dated 9 August 2016, by which, the appellant succeeded in obtaining interim relief restraining the implementation of notice under section 351 of the MMC Act.

6] Paragraphs 4 and 6 of the said order reads thus :

“4. Plaintiffs alleged that suit premises is censused in 1990 and 2000. Plaintiff has relied upon census receipt dated 06/12/1990 bearing No. 0220430 and receipt bearing No. 1489138 dated 21/07/2000. The plaintiff alleged that suit structure was inspected for assessment purpose as it is standing since prior to 1994. The plaintiff has obtained electric connection and water connection in the suit premises. The passport has also been issued in the name of plaintiff on the address of suit structure. It has been further alleged that notice under section 351 of MMC Act, is absolutely illegal as suit structure forms part of declared slum area, therefore defendants cannot issue impugned notice. Plaintiff further alleged that the Designated Officer did not take into consideration all the documents produced by the plaintiff with his reply and arrived at incorrect conclusion vide order dated 21/06/2016.

“6. The learned Advocate for plaintiff placed reliance upon the fact that suit structure forms part of declared slum area,

*therefore the impugned notice is absolutely illegal. To substantiate his contention, he relied upon the census receipts dated 06/12/1990 and 21/07/2000. The learned Advocate further placed reliance upon the decision in **Amba Chawl Wadi Rahiwasi Seva Sangh Versus Municipal Corporation of Greater Mumbai and others [2005 AIHC 3221]** and circular issued by the State of Maharashtra dated 22/07/2014.”*

7] From the aforesaid, it is more than clear that it was the case of the appellant that MCGM has no authority or jurisdiction to initiate any action under section 351 of the MMC Act because suit structure forms a part of the declared slum area. Now that the authorities under the Slum Act have initiated action in the matter, the appellant comes up with a case that the suit structure is situated on municipal property, and therefore, the authorities under the Slum Act have no local authority or jurisdiction to take action in the matter. This is a patently contradictory stand. The appellant has not approached the court with clean hands or with a candid case. On this ground itself, notice of motion taken out by the appellant in the second suit was required to be dismissed and has been rightly dismissed.

8] Mr. Shukla submitted that it is for the respondents i.e. defendants in the suit to produce documents to show as to where precisely the suit structure is situate. Such submission is required

to be stated only to be rejected. It is for the plaintiff / appellant to plead and thereafter at least *prima facie* establish his or her case. The plaintiff / appellant in the present case, has taken up contradictory stand. When it comes to opposing the action by the MCGM, the appellant contends that the suit structure forms a part of the declared slum area. Again, when it comes to opposing the action of the slum authorities, the appellant contends that the suit structure forms a part of the municipal area implying thereby that it is for the municipal authorities to take action, if action is at all warranted. In such a situation, the impugned order cannot be faulted. In fact, this is a fit case for imposition of costs. However, Mr. Shukla submits that the appellant may not be able to pay costs. It is also likely that the appellant has only gone by legal advice in the matter. Accordingly, no costs are imposed in this appeal. The appeal is dismissed without any order as to costs.

9] In view of dismissal of appeal, civil application does not survive and is disposed of accordingly.

(M. S. SONAK, J.)