

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 45 OF 2017
WITH
CIVIL APPLICATION NO. 65 OF 2017

Santhome Charitable Trust of Kalyan .. Appellant
vs.
Designated Officer-IV
Asst. Engineer (Bldg & Fact) and anr. .. Respondents

Mr. P.J. Thorat for the Appellant.
Mrs. M.M. More for the respondents-MCGM

CORAM : M. S. SONAK, J.
DATE : 15 FEBRUARY 2017.

P.C. :-

1] The challenge in this appeal is to the order dated 2 February 2017, by which, learned Trial Judge has declined the appellant (plaintiff) the ad-interim relief in the matter of execution of demolition notice dated 14 December 2016.

2] Mr. P.J. Thorat, learned counsel for the appellant, submits that the Designated Officer, who has issued the impugned notice dated 14 December 2016 and the impugned order dated 24 January 2017, had, in fact, granted opportunity to the appellant to show cause. The appellant, initially, applied for some time to file reply and furnish documents. Such time was granted. However, there was some slight delay in filing reply and submitting documents. In the meanwhile, the Designated Officer has made the impugned order dated 24 January 2017. Mr. Thorat submits that the appellant has produced several documents, which will establish that there is no unauthorised construction made.

3] Based upon the aforesaid submissions, this court on 6 February 2017, directed the parties to maintain *status quo*. Learned counsel for the Municipal Corporation of Greater Mumba (MCGM) was also requested to take instructions as to whether the Designated Officer can consider the belated reply submitted by the appellant and take a fresh decision in the matter.

4] In pursuance of the same, Mrs. More, learned counsel for the MCGM, has obtained instructions from Mr. Barde, Deputy Municipal Commissioner, Zone-VI, who is an Officer superior to the Designated Officer who had made the impugned order dated 24 January 2017. The instructions are that the Dy. Municipal Commissioner, Zone-VI, who also has authority to act in the matter and will himself take a fresh decision in the matter after taking into consideration the reply and the documents furnished by the appellant. Mrs. More states that such decision will only be in accordance with law and on its own merits. This means that there is no question of acting on the basis of the impugned order dated 24 January 2017.

5] The aforesaid course of action is agreeable to the appellant and Mr. Thorat learned counsel for the appellant submits that if this course is to be adopted, there is no point in the appellant proceeding with L.C. Suit No. 254 of 2017 any further. Mr. Thorat, however, submits that in case, any adverse order is made, some directions be issued for non-execution of the same for a period of two weeks from the date of communication.

6] Taking into consideration the reasonable stand adopted by the respective parties, this appeal can be disposed of with the following order:

a] The impugned order made by the Designated Officer on 24 January 2017 will not be acted upon. The Dy. Municipal Commissioner, Zone VI, will dispose of Show Cause Notice dated 14 December 2016 after taking into consideration the reply and the documents furnished by the appellant. Dy. Municipal Commissioner, Zone-VI will make a fresh order in accordance with law and on its own merits. In case, the appellant desires to file any further reply/documents before the Dy. Municipal Commissioner, the appellant may do so within a period of one week from today;

b] The order of Dy. Municipal Commissioner if adverse to the appellant, the same will not be implemented for a period of two weeks from the date of its communication to the appellant;

c] The appellant seeks leave to withdraw L.C. Suit No. 254 of 2017. Such leave is granted and L.C. Suit No. 254 of 2017 is disposed of as withdrawn;

d] The parties to place an authenticated copy of this order before the City Civil Court, which shall pass formal orders disposing of L.C. Suit No. 254 of 2017; and

7] The civil application for stay does not survive and the same is also disposed of.

8] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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