

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3901 OF 2015**

Mr. Jagnarayan Bhukhal Yadav

..Petitioner.

Vs

Thane Municipal Corporation of  
City of Thane

.. Respondent

Mr. Sagar A. Joshi, Advocate for Petitioner.

Mr. Mandar Limaye, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.**

**DATE : 11/01/2017**

**PC:**

1. Heard Mr.Sagar Joshi, learned counsel for the petitioner and Mr.Mandar Limaye, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 5.2.2015 passed by the learned District Judge-10, Thane in Misc.Appeal No. 2 of 2013. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as 'defendant', and quashed and set aside the judgment and order dated 29.11.2012 passed by the learned 5<sup>th</sup> Jt. Civil Judge, Sr.Dn., Thane below Exhibit-5 in Regular Civil Suit No. 1636 of 2012. The learned District Judge rejected the application for injunction filed by the plaintiff.

3. In support of this petition, Mr. Joshi has raised the following

contentions:

(i) Notice dated 8.10.2009 issued by defendant under section 260 of the Maharashtra Municipal Corporations Act, (for short, 'Act') is null and void as it is issued without any authority of law.

(ii) In respect of the area in question, M.I.D.C. is appointed as a special planning authority under section 40A of the Maharashtra Regional and Town Planning Act, 1966 (for short, M.R. & T.P. Act). In view thereof, the defendant-corporation constituted under the Act has no authority to take any action in respect of the alleged offending structure .

(iii) In any case, the offending structure is protected by virtue of the Government Resolution dated 11.7.2001 as the offending structure is situated in a slum area. In view of the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Slum Act'), the offending structure is a protected structure.

(iv) Lastly, he submitted that the injunction is operating since 2012 and, therefore, injunction order may be continued by directing the trial Court to decide the suit in a time bound manner.

4. Mr. Joshi also relied upon the following letters:-

(i) Letter dated 31.1.2011 issued by Executive Engineer of the defendant to Chief Promoter- Late Bharatratna Rajiv Gandhi Sahakari Gruhnirman Sanstha, Thane, which states that final

plot no.180 is within the limits of M.I.D.C. As per the sanctioned revised development plan, the M.I.D.C. area is deleted and for this area the M.I.D.C. is the competent authority;

(ii) Letter dated 8.8.2012 addressed by Information Officer/Assistant Commissioner of the defendant to the plaintiff herein informing the latter that the M.I.D.C. is the planning authority in respect of plots owned by it and that the M.I.D.C. has authority to remove encroachment over plots owned by it.

(iii) Letter dated 23.8.2012 addressed by Information Officer/Social Development Officer of the defendant to the plaintiff informing him that Hajuri is census slum and that for issuing photo-pass, the said area is censused prior to 1995.

5. He submitted that the learned trial Judge issued the injunction on the ground that the M.I.D.C is the planning authority in respect of the offending structure and the TMC is not the planning authority. As against this, the learned District Judge wrongly came to the conclusion that as the defendant is collecting taxes, it is the planning authority. The learned District Judge has ignored the correspondence relied by the plaintiff in that regard.

6. On the other hand, Mr. Limaye supported the impugned order. He submitted that the defendant is the planning authority in respect of the offending structure. The offending structure does not fall in an area which is declared as slum area.

Consequently, the plaintiff cannot claim to be a protected occupier as no photo-pass is issued to him. He submitted that the learned District Judge has considered the letters relied by the plaintiff in paragraphs 12 and repelled the contention of the plaintiff. In fact, the learned District Judge also referred to the fact that the M.I.D.C. has issued notice dated 20.9.2010 under section 55 of the M.R. & T.P Act for removal of the structure on the ground that it is unauthorised and illegal. He submitted that the offending structure is in Hajuri area and as per section 3(b) of the Act, it is within the municipal limits of the defendant-Corporation. He, therefore, submitted that as the defendant is the planning authority in respect of Hajuri area, it was fully competent to issue notice under Section 260 of the Act.

7 I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The learned District Judge has considered the contention advanced by the plaintiff that he is protected by the Government Resolution dated 11.7.2001. It is not in dispute that as on date the plaintiff is not issued any photo-pass as contemplated by Section 3X(b) of the Slum Act. Section 3X(b) defines the expression 'photo-pass' to mean an identity card-cum-certificate issued by the Government in the prescribed format under section 3Y, among others. Section 3X(c) defines expression 'protected occupier' to mean an occupier of a

dwelling structure who holds such photo-pass. In the present case, admittedly, as on date the plaintiff is not issued photo-pass. The plaintiff has also not produced any notification either under section 4 or 4A of the Slum Act. He, therefore, cannot claim protection of Government Resolution dated 11.7.2001.

8. As far as reliance placed on the letters dated 31.1.2011, 8.8.2012 and 23.8.2012 is concerned, the learned district Judge has considered these documents/letters in paragraph 12 and observed that the plaintiff has not established that the offending structure is in final plot no.180. The learned District Judge also considered whether the M.I.D.C. or the defendant-Corporation is a planning authority and has held that the defendant-Corporation is collecting taxes in this area and is, therefore, a planning authority. I do not find that the learned District Judge has committed any error in that regard. The learned trial Judge exercised the discretion arbitrarily, capriciously or perversely while issuing injunction. The learned District Judge was, therefore justified in interfering with the order passed by the learned trial Judge.

9. In the case of *Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727*, the Apex Court in paragraph 14 has laid down the following principles:

“14. ...., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been

exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

In the light of the tests laid down by the Apex Court in the aforesaid decision and after considering the material on record, I do not find that the learned District Judge has committed any error in passing the impugned order. The learned trial judge exercised the discretion arbitrarily or perversely and has ignored the settled principles of law relating to grant or refusal of interlocutory injunction. In view thereof, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)