

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (STAMP) NO.9913 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.9914 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO.9913 OF 2017**

Yusuf Salim Ahmed Khan & Anr. ...Appellants/Applicants

vs.

Municipal Corporation of Greater Mumbai And Anr. ...Respondents

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Mr. N.R. Tiwari, for the Appellants.

Mr. N.V. Walawalkar, Senior Advocate, a/w. Ms. Madhuri More, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED : 21 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. The Appeal from Order challenges an order passed the City Civil Court at Bombay on a draft Notice of Motion taken out by the Appellants (Original Plaintiffs) in their suit before the Court. The suit challenges a notice issued by the Municipal Corporation under Section 314 of the Mumbai Municipal Corporation Act("Act"). The notice is on the footing that the suit structure, which consists of a shop of ground plus one floor erected or set up upon a street, namely, L.B.S. Marg at

Ghatkopar West, Mumbai. The notice alleges that the shop is erected or set up without seeking permission of the Commissioner under Section 310 or 317 of the Act and, accordingly, under the provisions of Section 312 of the Act, is an illegal structure.

3. From the photographs relied on by the Plaintiffs themselves before the Court, it is apparent that the suit structure is right on the street, occupying a substantial portion of the footpath. The definition of street in clause (w) of Section 3 of the Act includes a foot way in any street. Admittedly, there is no authorisation of the Commissioner under Section 310 or 317 of the Act. Section 312 of the Act prohibits erection or setting up of any structure in or upon any street so as to form an obstruction to, or an encroachment upon, or projection over, or to occupy, any portion of such street. Any such structure can be removed without notice under Section 314 of the Act. In the present case, it appears that, by a notice dated 1 March 2017, the Plaintiffs were called upon to remove the suit structure within 48 hours, failing which the structure would be removed and seized by the Corporation at the Plaintiffs' risk and cost. Learned Counsel for the Municipal Corporation relies on a letter addressed by Plaintiff No.1 on 16 March 2017 to the Corporation, in response to the impugned notice, communicating to the Officers of the Corporation his intent to remove/demolish the structure on his own. In view of this communication and a statement made by learned Counsel for the Appellants before this Court when the matter was heard on 7 April 2017, the Court noticed that the First floor of the suit structure was already demolished, and recorded a further statement on the part of learned Counsel that if any balance portion remained from

the first floor, the same would be removed by the Appellants before the next date. This Court accepted that statement. The matter was stood over to the next date to decide the Appellants' challenge to the legality of the proposed action of the Respondent Corporation as regards the ground floor. Today, when the matter is called out, learned Counsel for the Appellants disputes the authenticity of the letter relied upon by the Municipal Corporation. Learned Counsel submits that this letter has not been addressed by Plaintiff No.1 to the Municipal Corporation. He relied on an affidavit tendered today across the bar in this behalf. Be that as it may, as I have noted above, there is no authorisation insofar as the suit structure is concerned and, in the premises, the Municipal Corporation cannot be restrained from demolishing the structure, which stands on a large and busy street such as L.B.S. Marg in Ghatkopar (West), Mumbai.

4. Learned Counsel for the Appellants advances two submissions. Firstly, it is submitted that the Corporation was aware of the suit structure for over a year and, in the premises, a minimum notice of ten days to two weeks had to be given to the Plaintiffs for removal of this structure. Learned Counsel relies on judgment of this Court in the case of **Kapurbavdi Vyapari Samaj Unnati Mandal vs. Thane Municipal Corporation**¹. The judgment does not state any such proposition. What it simply states is that if a Corporation allows settlement of encroachers for a long time for reasons best known to it, then necessarily a modicum of reasonable notice for removal, say of two weeks or 10 days, with personal service on the encroachers or substituted service by fixing a notice on the property, may be necessary. In the present case, as a matter of fact, the Plaintiffs have had an adequate

¹ 1999(1) LJ 229

notice. Besides, there is nothing to show that this structure was allowed for a long time for the reasons best known to the Corporation. Secondly, it is submitted that the suit structure forms part of a slum. Learned Counsel relies upon a map of structures forming part of a slum rehabilitation scheme at City Survey Nos. 151, 151/1261. There is nothing to indicate from this plan, which anyway was not before the Trial Court when the impugned order was passed, that the suit structure forms part of this particular scheme. As I have noticed above, the photographs of the suit structure make it very clear that the suit structure does not form part of any plot of land but is erected and set up right on a public street.

5. The impugned order of the Trial Court takes into account the documents produced by the Plaintiffs and observes that from these documents, the structure, in respect of which the impugned notice is issued, does not seem to be falling within any slum area. The Court also notices that from the Defendants' documents on record, the structure is seen to be falling within the area of L.B.S. Road.

6. In the premises, the impugned order does not grant any interim relief to the Plaintiffs. No fault can be found with this order, which correctly assesses the evidence on record and applies correct provisions of law to the facts so found.

7. In the premises, the Appeal from Order is dismissed. No order as to costs. The Appellants are permitted to remove their belongings within a period of one week from today. The Corporation

will be within its rights to demolish the structure after one week with such force, including assistance of local police station, as it may deem necessary.

8. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and the same is disposed of.

(S.C. GUPTE, J.)