

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 95 OF 2017
WITH
CIVIL APPLICATION NO. 3090 OF 2016

The Municipal Corporation
of Greater Mumbai

.. Appellant

vs.

Mr. Mahmood M. Shaikh

.. Respondent

Mr. A.Y. Sakhare, Senior Advocate a/w. Ms M.R. Bhoir for the
Appellant-MCGM.

Mr. Mohit Jadhav for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 22 FEBRUARY 2017.

P.C. :-

1] Heard Mr. Sakhare, learned senior advocate along with Ms M.R. Bhoir, learned counsel for for the appellant-Municipal Corporation of Greater Mumbai (MCGM) and Mr. Mohit Jadhav, learned counsel for the respondent.

2] Since along with the memo of appeal, the paper book containing the material on record has been annexed, learned counsel for the parties agree that this appeal itself can be disposed of finally, at this stage.

3] The appellant is the original defendant and the respondent is the original plaintiff in L.C.Suit No. 2025 of 20112. The appellant allegedly issued a notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 (MMC Act) on 12 March 2012 to the respondent alleging that the respondent was undertaking an illegal construction. Thereafter, on 13 March 2012, the suit structure

was demolished by the appellant. Therefore, the respondent instituted L.C. Suit No. 2025 of 2012 complaining about non-compliance with due process of law and seeking relief for restoration of the suit structure.

4] By the impugned judgment and decree, the following relief has been granted by learned Trial Judge :

“ORDER

1. *Suit is decreed with costs.*
2. *Defendant is directed to reconstruct suit structure on the same portion in suit site within three months from the date of this order.*
3. *On failure of defendant to reconstruct structure within three months, liberty is granted to plaintiff to reconstruct said structure by giving written intimation to defendants at the cost of plaintiff, strictly as per prayer clause (b) in said portion.*
4. *Decree be drawn up accordingly.”*

5] Mr. Sakhare, learned senior counsel for the appellant-Municipal Corporation of Greater Mumbai (MCGM), submits that the issue of notice under section 354A of the MMC Act constitutes compliance with due process of law. In this case, since no reply was furnished by the respondent, the impugned action was taken. Mr.Sakhare submits that in any case, it is apparent that the suit structure was illegal and therefore, in the facts and circumstances of the present case, no direction could have been given in the matter of reconstruction of such structure. Without prejudice, Mr. Sakhare submits that the relief granted in the impugned judgment and decree cannot be considered as a permanent restraint upon the MCGM from taking action in accordance with law.

6] Mr. Jadhav, learned counsel for the respondent, submits that the notice dated 12 March 2012 was never served upon the respondent and on 13 March 2012, in a high handed manner, the suit structure came to be demolished. He submits that the MCGM in the present case has not even filed its written statement to the plaint. Therefore, the pleadings in the plaint to the effect that no notice under section 354A of the MMC Act was ever served upon the respondent stand admitted. In these circumstances, Mr. Jadhav submits that it is quite clear that there was no compliance with due process of law. He submits that there is no case made out to interfere with the impugned decree.

7] The rival contentions now fall for my determination.

8] In the plaint, there are clear averments to the effect that the notice dated 12 March 2012 under section 354A of the MMC Act was never served upon the respondent. Since, the MCGM, despite opportunity choose not to file any written statement in the matter, learned Trial Judge was justified in proceeding on the basis that no such notice was ever served on the respondent. Further, the record indicates that the respondent, prior to institution of the suit, has issued notice under section 527 of the MMC Act to the MCGM. In the said notice also the same allegation was made. The MCGM neither bothered to counter what was stated in such notice nor did the MCGM bother to file any written statement denying the pleadings in the plaint.

9] Even in the course of evidence, contradictory pleas were sought to be taken by the MCGM. At one stage, a suggestion was put to the effect that the MCGM has not demolished the suit structure at all. However, at a later stage, it was noticed that the officer of the MCGM himself filed a demolition report. In the written submission before the learned Trial Judge also it is admitted that the demolition was carried out by the MCGM on 13 March 2012, i.e., within hardly 24 hours from the date of alleged notice under section 354A of the MMC Act. All this, does suggest that there was no compliance whatsoever with the due process of law. The MCGM has also acted in breach of guidelines/directions issued by this court in case of ***Sopan Maruti Thopte and anr. vs Pune Municipal Corporation – AIR 1996 Bom 304***. Thus construed, there is no case made out to interfere with the impugned judgment and decree.

10] However, the apprehension expressed by Mr. Sakhare can always be addressed by clarifying that even after reconstruction of the suit structure by the respondent, if, the MCGM is of the opinion that the original suit structure was un-authorised and illegal, then, it is always open to the MCGM to comply with due process of law and to take action as permissible under the law. There is nothing in the impugned judgment and decree, which disables the MCGM from complying with due process of law or taking action in accordance with law. However, in the facts and circumstances of the present case, there is no case made out to interfere with the impugned judgment and decree.

11] With the aforesaid observations, this appeal is dismissed. The civil application does not survive and the same is also disposed of .

12] Mr. Mohit Jadhav, learned counsel for the respondent, on basis of instructions from the respondent, states that the respondent will not press contempt petition bearing Contempt Petition No. 290 of 2016 instituted by him against the MCGM, since, the MCGM despite the impugned judgment and decree, was obstructing the respondent from reconstructing the suit structure in pursuance of the impugned judgment and decree.

(M. S. SONAK, J.)

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