

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1385 OF 2014
WITH
CIVIL APPLICATION NO.4068 OF 2014

Kamaluddin Namiullah Khan	...Appellant
<i>Versus</i>	
Mashooq Ansar Siddiqu & Anr	...Respondents

Mr AA Siddiquie, i/b AA Siddiquie & Asso, for the Appellant.
Mrs M Bhoir, i/b UH Deshpande, for Respondent No.2.

CORAM: G.S. PATEL, J
DATED: 5th June 2017

PC:-

1. Admit. By consent, taken up for final disposal.

2. By the impugned order dated 12th August 2014, the suit was dismissed on the preliminary issue of jurisdiction. The learned Single Judge held that without permission of the Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slum Act”), the suit was not competent. The learned Single Judge found that Section 22 of the Slum Act was applicable. This presumes that the area in question was in fact declared as a slum. That is a question of

fact. It was not examined as a question of fact by the learned Single Judge, who proceeded on the basis that this was so. However, no notification or material showing any such declaration seems to have been placed before him.

3. I find that there is an Affidavit in Reply to Civil Application No.4068 of 2014 by one Kiran Shivajirao Dighavkar on behalf of the Municipal Corporation. Paragraph 2 of this Affidavit makes it clear that the area is not declared as a slum by the Government although census numbers have been issued. Paragraph 3 of this Affidavit reads as follows:

“Para 3: I say that the said reply is tendered in the Hon’ble High Court on 2.9.2015. I say that on 7.10.2015 Respondent No.1 produced one document wherein stating that Shivaji Nagar, CTS No.58 and 60 is declared as a slum by Govt. Notification dt.8.7.1976. I say that these Respondent verified the fact and taken out the gazette copy of notification dt.8.7.1976, as per same, said notification does not pertain to this area and the same pertains to Golibar Jawahar Nagar, Santacruz East and the same is for City Survey No.96. I say that these Respondent confirmed the statement made by the Colony Officer in his affidavit affirmed on 1.9.2015. I am annexing copy of the said as annexure 1.”

4. In view of this, the impugned order cannot be sustained.

5. The matter will have to be remanded. The impugned order is set aside. The suit is restored to file. The Plaintiff had also filed a

Notice of Motion for interim relief. The Suit and Motion will be placed on board on 19th June 2017 for directions. As regards the Notice of Motion, the learned Single Judge will issue necessary directions for filing replies and rejoinders, including an affidavit in reply by the MCGM setting out the latest position in regard to the area in question and, in particular, whether the area has been declared and notified as a slum after 2014. If so, copies of the relevant documents will be placed before the Trial Court. All questions are left open, including as to maintainability.

6. The learned Single Judge is requested to dispose of the Motion at the earliest.

7. The Appeal is disposed of in these terms.

8. In view of the disposal of the Appeal, the Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J.)