

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

**APPEAL FROM ORDER st. NO.26808 OF 2017
with
CIVIL APPLICATION st. NO.26809 OF 2017**

Atul Devchand Shah

... Appellant

Vs.

Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.Mayur Chandrasekhar i/b M/s.Pramod Kumar & Co. for the Appellant

Mrs.Madhuri More, for Respondent No.1 / Corporation

Mr.S.P. Thor at for Resp. No.2 / MHADA

Mr.Manoj Upadhyay for Resp. No.4

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 25, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 16.9.2017 passed by the learned Judge, City Civil Court, Dindoshi, in Notice of Motion No.2997 of 2017 in L.C. Suit No.2531 of 2017. The plaintiff, by the said Notice of Motion, had prayed that the defendants i.e., the respondents, be restrained from demolishing the existing toilet blocks and carrying out construction of new toilet blocks without following due process of law. During the pendency of this Motion, construction of new toilet blocks is over and,

therefore, that prayer has become infructuous. Thus, the only prayer in respect of injunction against the relief of demolition of existing toilet blocks is to be considered.

2. It is the case of the plaintiff/appellant that he is the owner of the plot i.e., CTS No.32A at village Pahadi at Goregaon. According to the plaintiff, this plot is adjacent to another plot bearing CTS No.568 which falls in the territory of Malad. Respondent No.4 is carrying out development work in CTS No.568. The plaintiff's plot 32A is declared as slum in the year 2012. On this plot, 32 toilet blocks were constructed. Those old toilet blocks are in bad condition and, therefore, MHADA, Respondent No.2 herein, has constructed 42 toilet blocks. It is the case of the plaintiff that the respondents now want his plot and they want to demolish the old toilets and, therefore, he seeks the relief of injunction against the work of demolition against the respondents. The trial Court after hearing all the parties, rejected the ad-interim relief. Hence, this Appeal from Order.

3. The learned Counsel for the appellant has submitted that the respondent/MHADA or the Mumbai Municipal Corporation have no inherent jurisdiction to proceed with the action of demolition. The

learned Counsel argued that the appellant is the owner of the plot and the toilet blocks stand on his plot and, therefore, he has every right to object to the demolition of structures which stand on his plot. The learned Counsel has submitted that if the demolition is conducted under the scheme of Slum Improvement, then, neither MHADA nor the Corporation or MMRDA are competent to take any steps towards improvement. The learned Counsel argued that as his plot is declared as slum, the improvement can take place u/s 4 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. Then, only the competent authority i.e., the Collector, can take steps under sections 5 and 5A of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. He argued that for improvement, Mumbai Slum Improvement Board can also be appointed u/s 18(1) (c) of the MHADA Act, 1976 and the Board can take steps for improvement and thereafter by following due procedure under sections 108 and 109. He submitted that the Board has no right to take action of improvement unless it gives a proper public notice to the owner which is not given in this case. He further submitted that if respondent No.1 Corporation wants to demolish these toilets, then it is obligatory on the part of the Municipal Corporation

to issue notice u/s 351 of the Mumbai Municipal Corporation Act or any other provision of the Mumbai Municipal Corporation Act. The learned Counsel submits, however, no such notice is given by either of the authorities and the only notice given is on 2.11.2015 by the ,Corporation which is not a substantial notice or a good notice. The learned Counsel has submitted that the learned Judge of the trial Court also ought not to have accepted that it was a valid notice. He further submitted that the action of demolition is required to be taken after following the due process of law. The learned Counsel submitted that this legal position is not considered by the learned trial Judge and this being a law point, this can be pressed even at the appellate stage and it could be decided.

4. Per contra, Mr.Thorat appearing for Respondent No.2 / MHADA, submitted that MHADA is empowered to take action in respect of demolition and construction of the toilet blocks on the plot which is declared a slum and also a private land. He has submitted that old toilet blocks were constructed in 1986 by MHADA and they were renovated from the funds of the local MLA.

5. The learned Counsel for the respondent/Corporation while supporting the submissions made by Mr.Thorat, has relied on the notice dated 2.11.2015 issued by the Corporation. It is further pointed out that there was a letter written by the Executive Engineer of MSIB, MHADA, on 21.8.2017 about the construction of toilet blocks as the old toilet blocks are in dilapidated condition and there are many complaints of sewage line overflow, sludge, etc. He has also relied on the letter issued by the Corporation dated 18.3.2016 that permission is required. He pointed out to a Government Resolution dated 5.10.2002 that on a private land which is declared a slum, for the construction of toilets, no-objection of the owner is not required. Both the learned Counsel for the Corporation and MHADA have submitted that a proposed DP road runs through plot No.568 and the plot of the plaintiff and the Corporation has specifically informed the Assistant Municipal Commissioner, MHADA of the demolition of old toilets and besides that, new toilets are to be constructed.

6. The learned Counsel for Respondent No.4 also adopted and supported the submissions of the learned Counsel for Respondent No.1 and Respondent No.2. He submitted that the old toilets are

not functional and there are many complaints about the use of the said toilets. He further submitted that he has objection to the jurisdiction of the civil Court u/s 42 of the Slums Act.

7. Heard submissions and perused the necessary documents which are presented before the Court and the impugned order so also the plaint, Notice of Motion of the appellant. The main limb of the arguments of the learned Counsel for the appellant is whether the MHADA or Mumbai Municipal Corporation has power to demolish the existing toilets which stand on his plot declared as a slum. His objection can be met by respondent Nos.1 and 2 by filing proper affidavit before the trial Court at the time of hearing of the Notice of Motion, which is fixed on 23.10.2017. It appears *prima facie* that the Slum Improvement Board i.e., Respondent No.2, has constructed the earlier toilet blocks and as new toilets are constructed in the place of old ones, they want to demolish the same. Thus, the toilet blocks were not constructed by the appellant i.e., the plaintiff. He claims to be the owner of the plot, however, it is declared a slum.

8. It is, therefore, difficult to accept that the appellant/plaintiff has any legal right in the old toilets which are being used by the

slum dwellers and which were not constructed by him. The public notice dated 2.11.2015 cannot be said as vague at this stage as it mentions the name of slum dwellers of Makranipada, Malad (East). To that extent, the observations made by the trial Court cannot be accepted. However, the remaining order cannot be said to be illegal and it does not require any interference at this stage, as it is an order passed at an interim stage. All the issues raised by the parties can be dealt with at the stage of final hearing of the Notice of Motion. With this, Appeal from Order is dismissed.

9. In view of the dismissal of the Appeal from Order, Civil Application also stands dismissed.

(MRIDULA BHATKAR, J.)