

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 26811 OF 2017
WITH
CIVIL APPLICATION NO.26812 OF 2017**

Mohammad Salim Mohd. Yusuf Qureshi ... Appellant/Applicant
Vs.
The Municipal Corporation of Greater
Mumbai & Anr. ... Respondents

Mr. Atul Damle, Senior Advocate a/w. Mr. S. Pal i/b. Mr. Pratap Singh,
Advocate for the appellant.

Mrs. Madhuri More, Advocate for the respondents.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 29th SEPTEMBER, 2017

P.C.:

This Appeal from Order is directed against the order dated 4th September, 2017 in Notice of Motion No. 2924 of 2017 in L.C. Suit No. 1584 of 2017. The respondent/Corporation has issued stop work notice and demolition of structure to the appellant/plaintiff under section 354A of Mumbai Municipal Corporation Act. The trial Court has refused to protect the suit property. As interim relief is rejected, this Appeal against the said order is filed.

2. Heard the submissions of learned counsel for both the sides.

Perused the order passed by the learned trial Judge. On perusal of the record, documents and the impugned order, I am of the view that the impugned structure is unauthorized and per the report of the Corporation, it was demolished twice in the month of April and May, 2017. The order is found well-reasoned. However, the learned trial Judge has lost sight of the provisions of Maharashtra Slum Areas Clearance and Development Act (for short "Slum Act") and also in respect of the submissions of appellant/plaintiff that the area where the structure stands is declared as slum.

3. The learned counsel for the Corporation disputes that the area is declared as slum.

4. However, it is a factual position which can be proved by the appellant/plaintiff on production of notification declaring the said area as slum. If the area is declared as slum, then whether the Corporation is authorized to give notice under section 354A of the M.M.C. Act or is it a competent authority under the Slum Act who can give notice under section 3Z-2 of the Slum Act. So also, the trial Court needs to take into account the provisions under section 47 of the Slum Act. Thus, only on this point, this matter is remanded back

to the trial Court. The trial Court need not go into the merits of the matter on other points which are already decided but to decide only the point which is addressed hereabove and give finding accordingly.

3. Parties to appear before the learned trial Judge on 6th October, 2017 at 11 a.m. Parties to cooperate and produce necessary documents to enable the trial Judge to decide the issue on or before 10th November, 2017. Interim relief granted by this Court in respect of structure is extended upto 10th November, 2017.

4. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

5. Parties to act upon the authenticated copy of this order.

(MRIDULA BHATKAR, J.)