

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER st. NO.32142 OF 2017
with
CAAST./32144/2017

Abdul Aziz Abdul Gani Chand ... Appellant

Vs.

Assistant Municipal Commissioner ... Respondent

Mr.V.B. Pandey for the Appellant
Mrs.Madhuri More for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **DECEMBER 11, 2017**

P.C.:

1. This appeal is directed against the judgement and order dated 8.11.2017 passed in the draft Motion in L.C. Suit No.2997 of 2017, thereby refusing to grant ad-interim relief. The plaintiff-appellant has challenged the notice dated 22.9.2017 issued u/s 351 of the Mumbai Municipal Corporation Act and the order dated 25.10.2017 passed by the Designated Officer.

2. The learned Counsel for the appellant- plaintiff submitted that the structure of the plaintiff is standing prior to 2014. He submitted that it is in fact standing since 1960. The learned Counsel relied on

the reply given by the plaintiff to the said notice. He further argued that the order passed by the Designated Officer rejecting the fact of existence of the suit structure on the basis of the documents filed by the plaintiff/appellant, is erroneous. He relied on the licence issued on 2.7.1997 under the Bombay Shops and Establishments Act by the corporationi favor of his brother i.e., Yakub. He produced receipts issued by the Bombay Municipal Corporation of the year 8.8.1962 in the name of Gani Chand and other receipt dated 2.8.1960 received from Gani Chand in respect of suit structure which is shop No.8. The learned Counsel has submitted the present appellant came to the suit premises in the year 1984 and the present appellant was put in possession of the suit premises by the Corporation itself and, therefore, the Corporation should come before the Court disclosing whether in the year 1960 to 1961, what was the nature of the structure. He submitted that earlier, similar notice was issued u/s 351 in the year 1994 and so the plaintiff has filed Civil Suit No.4996 of 1994 and the Court by order dated 15.7.1997 has directed the Corporation to follow due process of law i.e., no demolition shall take place for 8 weeks after the issuance of the order of demolition. The learned Counsel has submitted that since 1994 till today, the suit structure is protected. The Corporatin has not taken any action and,

therefore, the order of the trial Court rejecting the ad-interim relief is illegal and bad in law.

3. Learned Counsel for the Corporation while opposing this application has submitted that the Corporation issued the notice only in respect of construction on the ground floor. The Corporation has issued licence under the Shops and Establishments Act in respect of Shop No.8 on the ground floor and according to the Corporation, the structure of shop No.8 is legal and authorised, however, the plaintiff/appellant has made a further construction on the roof of the shop No.8 and that is illegal and to that extent only, the Corporation has issued notice of demolition. She relies on the order passed by the Designated Officer dated 25.10.2017.

4. Heard submissions. Perused the documents relied on by the appellant; perused the order of the Designated Officer. The order discloses that the Designated Officer has considered all the documents which were produced by the appellant/plaintiff. There are documents disclosing that in 1994, the suit structure was in existence. The fact that the notice of demolition was issued by the Corporation in the year 1994 u/s 351 of the Act itself is a proof that in the year 1994, the suit structure i.e., ground floor of the structure was

in existence. It is necessary for the plaintiff to show that the suit structure i.e., the first floor was in existence in the year 1961-1962. After going through the papers and documents including the receipts of the payment of the property taxes or the licence fees under the Shops and Establishments Act, it does not show that the suit structure i.e., the structure on the first floor was in existence in the year 1961-1962. The said receipt is a proof of ground floor shop No.8. They show that the uncle of the appellant was earlier in the suit premises and thereafter, it appears in 1984, as per the appellant's case, he came in possession of the same. The Corporation is the owner of the building where the appellant is having a tenanted shop. The stand taken by the appellant that burden is on the Corporation to prove that the building is only of ground floor, cannot be accepted. On perusal of the photographs, it appears that that the structure on the first floor is constructed subsequently.

5. Prima facie, it shows that the notice issued by the Corporation is legal and no error can be found with the order passed by the learned trial Judge rejecting the ad-interim relief. No interference is required. Appeal is dismissed.

6. In view of the dismissal of the appeal, Civil Application also stands dismissed.

7. Learned Counsel for the appellant submits that the appellant wants to challenge this order before the hon'ble Supreme Court and hence, this order be stayed for 4 weeks and the earlier interim relief be continued till then. Accordingly, stay granted for four weeks and the earlier interim relief, if any, to continue till then.

(MRIDULA BHATKAR, J.)