

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

**APPEAL FROM ORDER NO.14 OF 2017
WITH
CIVIL APPLICATION NO.17 OF 2017
IN
APPEAL FROM ORDER NO.14 OF 2017**

Mr.Mohammed Zainulabedin Mohd. ..Appellant/Applicant
V/s.

The Municipal Corporation of
Greater Mumbai & Anr. ..Respondents

Mr.Pratap Singh a/w Mr.Shilesh Singh for the
Appellant/Applicant.

Mrs.M.M. More for Respondent-BMC.

CORAM : M. S. SONAK, J.

DATE : 17 JANUARY 2017.

P.C.

1. Heard Mr.Pratap Singh learned counsel for the
appellant and Ms.M.M. More for the Respondent-Municipal
Corporation of Greater Mumbai (MCGM).

2. Mr.Pratap Singh submits that the property where
the suit structure is situated has already been declared slum
area in the year 1976 and therefore, the MCGM is not at all the

Competent Authority to initiate action against the suit structure. Mr.Singh submits that suit structure was constructed in the year 1962 by his grand father and therefore, it is a protected structure. He submits that appellant has not carried out any authorized construction and there are several technical deficiencies in the notices issued by the MCGM to the appellant. He submits that, the impugned order, which has not considered all these aspects, warrants interference.

3. On the other hand learned counsel Ms.More for MCGM submits that notice was served upon the appellant at the stage when the appellant was in the process of carrying out unauthorized construction. She points out that in the notice it is stated that the existing ground floor structure was demolished by the appellant and the appellant was in the process of undertaking the unauthorized construction by way of construction/erection of RCC columns covering area of 7.31m x 11.58m approximately. The notice, required the appellant to stop such unauthorized construction, and together to demolished whatever unauthorized construction was actually

undertaken. She submits that the appellant paid no need to this notice and even after certain demolitions were carried out, has proceeded to erect an unauthorized construction, and thereafter, approach the Trial Court for relief. She has placed on record photographs and the inspection report, of which cognizance was taken by the learned Trial Judge and on the said basis she submits that there is no absolutely case made out to interference with the impugned order.

4. Having considered the submissions made by the learned counsel for the parties and upon perusal of the material on record, in my judgment, there is no case made out to interfere with the impugned order. It appears that the appellant-plaintiff has been far from candid with the Court. In the context of the photographs annexed to the inspection report submitted by the officers of the MCGM, which clearly show ongoing construction at the suit site as also, certain demolition being effected on 21-01-2016, the appellant, has set up a case of total denial as if to suggest that photographs has no nexus whatsoever with the structure now put up or in existence at the

suit site. To these photographs itself, is annexed one more photograph which shows the status of the structure, which is completed by the appellant, despite notices and demolition. Upon query as to whether at least this structure is the structure of the appellant, quite reluctantly it is conceded that this is the structure of the appellant. However, it is stated that this structure was constructed by the grand father of the appellant in the year 1962 and that this structure qualifies to be a slum structure in view of the notification of the year 1976.

5. From the perusal of the photographs, it is impossible to accept that the structure in question is some structure constructed some time in the year 1962. Infact, it is quite apparent that the appellant has demolished the existing ground floor structure and was in the process of constructing a multi stored structure (ground plus four storeys), when the MCGM noticed the construction and issued notice to the appellant. Instead of complying with the notice or at least, showing some proper cause, the appellant addressed a reply appending thereto several documents, most of which are

irrelevant. This is because at no stage the appellant produced any permission for construction or any authorization for reconstruction which was evidently undertaken by him. Dissatisfied with the reply, the MCGM proceeded with demolitions. However, it appears, after the demolition were completed, the appellant proceeded to reconstruct and thereafter, instituted the suit and tried to obtained interim reliefs. In such circumstances, the Trial Judge has rightly declined interim reliefs.

6. The appellant, has annexed certain photographs along with the plaint. However, this is a case of *suppressio veri suggestio falsi*. The appellant has been far from candid to the Civil Court. The appellant has produced no documents which permit the construction on such of huge structure in a slum area. Even assuming that the property was situated in slum area, there is no question of the appellant undertaking such a huge construction therein without obtaining any permission from the MCGM or other statutory authorities.

7. The appellants seems to be under impression that once the construction howsoever unauthorized, is complete, the laws delay will perhaps the assist the appellant in retaining the structure. The Trial Judge has properly appreciated the material on record and rightly declined a relief of injunction, which in any case is an equitable relief.

8. There is neither any error of principle nor can it be said that the view taken by the learned Trial Judge is perverse or unreasonable. Therefore, applying principles laid down by the Hon'ble Supreme Court in the case of ***Wander Limited and Anr. V/s. Antox India Private Limited 1990(SUPP) SCC 727***, there is no case made out to interfere with the exercise of discretion by the Trial Court. The appeal is accordingly dismissed. Ad-interim order, if any, is vacated.

9. The appellant shall pay cost quantified at Rs.25,000/-to the MCGM within a period of four weeks from today.

10. At this stage the learned counsel for the appellant seeks for continuation of ad-interim relief. Request is opposed by Ms.More. Looking to the conduct of the appellant, it is not possible to extend the ad-interim relief any longer. The request is accordingly not accepted.

(M. S. SONAK, J.)