

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 35162 OF 2016
AND
CIVIL APPLICATION (ST.) NO. 35164 OF 2016

Mr. Kiran N. Pradhan

.. Appellant

vs.

Municipal Corporation of Greater
Mumbai

.. Respondent

Mr. S.P. Chavan for the Appellant.

Ms M.R. Bhoir for the Respondent-BMC.

CORAM : M. S. SONAK, J.

DATE : 04 JANUARY 2017.

P.C. :-

1] With the consent of and at the request of learned counsel for the parties, this appeal is taken up for final disposal and disposed of accordingly.

2] The appellant appeals against the order dated 1 December 2016, by which, learned Trial Judge has declined to grant the appellant ad-interim protection.

3] Mr. Chavan, learned counsel for the appellant, has submitted that the appellant is a lessee in respect of the larger property referred in the deed of lease/resolution dated 7 August 1950 (Exhibit-A to the appeal memo). He submits that in terms of this document, the appellant was entitled to put-up a temporary structure essentially for the purposes of cultivation of the larger property of which the appellant is lessee. He submits that besides being temporary, has been assessed to tax. He also submits that the

name of the predecessor-in-title of the appellant is reflected in the revenue records since the year 1979-80. He submits that since this material *prima facie* establishes the existence of the temporary structure prior to datum line, this was not a case for issuance of any notice under section 154 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act). Mr. Chavan submits that on basis of such documentary evidence itself, ad-interim relief was required to be granted. He submits that the balance of convenience is also in favour of grant of ad-interim relief.

4] On the other hand, Ms Bhoir, learned counsel for the respondent, submits that even the document dated 7 August 1950 clearly states that the land was granted only for the purposes of cultivation of the crops. She submits that there are contradictions in the documents filed on record by the appellant and this is clearly a case where bar under section 154 of the MRTP Act is attracted. For all these reasons, there is no case made out to interfere with the impugned order.

5] Having heard learned counsel for the parties and perused the material on record, only from the perspective of deciding as to whether the appellant deserves some protection until his notice of motion is disposed of, I am of the opinion that limited ad-interim relief can be granted to the appellant in the matter.

6] The document dated 7 August 1950, at clause 7, states that the lessee shall not erect any buildings on the said land except such temporary structures as are essential for purposes of cultivation. The

impugned order itself records that the structure is temporary and made up of tarpaulin and bamboo. There is reference to the structure being mentioned in the revenue records of the year 1979-80. The contradictions in the documents as well as the entitlement of the parties can always be looked into by the learned Trial Judge, at the stage of deciding the notice of motion. If, at this stage, the temporary structure is permitted to be demolished, then, it is possible that the notice of motion instituted by the appellant is virtually rendered infructuous.

7] Therefore, upon cumulative consideration of all the materials on record, directions are issued to both the parties to maintain *status quo* in respect of the disputed structure until the notice of motion instituted by the appellant is heard and disposed of. Learned counsel for the parties state that notice of motion is fixed for hearing on 21 January 2017. Learned Trial Judge is requested to proceed with the hearing on the notice of motion and directed to dispose of the notice of motion within a period of two months from today.

8] However, it is made clear that the observations in the impugned order or for that matter the present order, learned Trial Judge need not to be influenced whilst deciding the notice of motion. The notice of motion is to be decided on its own merits and in accordance with law.

9] This appeal is accordingly allowed to the aforesaid extent. There shall however, be no order as to costs.

10] In view of disposal of main appeal, the civil application does not survive and the same is disposed of accordingly.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

dinesh