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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.488 OF 2015

Rajaram Chaugle Gurappa & Anr. ...Petitioners
vs.
The Municipal Corporation of
Greater Mumbai & others ...Respondents

Mr.Wasim R. Khan for the Petitioners
Ms Vandana Mahadik for the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI,JJ.

DATE : JUNE 13, 2017

P.C.:

1 Heard the learned counsel for the petitioners. The substantive challenge in this petition under Article 226 of the Constitution of India is to the notices dated 16th April 2014 issued to the petitioners (Exhibit-D to the petition) in exercise of power under section 354A of the Mumbai Municipal Corporation Act,1888. The first notice addressed to the first petitioners is in respect of the unauthorised erection of M.S.angle for making a provision for first floor. It records that the construction was in progress. The second notice is addressed to the second petitioner alleging unauthorised erection of M S angles for construction of first floor. It mentions that the construction was in progress.

2 It is pointed out by the learned counsel for the petitioners that parts of the structure have been demolished. The submission of the learned counsel

for the petitioners is that as the said structures are situated within slum area, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Officers of the first respondent-Mumbai Municipal Corporation had no power to take action in respect of the structure subject matter of the impugned notices. The first submission is that action could have been taken only by the Competent Authority. He, therefore, submitted that action of issuing impugned notices is without jurisdiction.

3 We have considered the submissions. It will be necessary to make a reference to the averments made in paragraph 4 of the petition. Paragraph 4 refers to earlier notice issued in the year 2004 under section 354A of the said Act of 1888 in respect of the same structure. In paragraph 4, there is a averment regarding L.C.Suit No.4974 of 2004 filed in the City Civil Court. Reliance is placed on the copy of the Judgment delivered in the said suit. The Judgment shows that the said suit was in respect of the structure admeasuring 28 X 17 feet. In the first paragraph it is stated that height of structure is 9 feet. Even according to the case of the petitioners, the subject matter of the present petition and the said suit is the same. Thus, when the suit was filed in the year 2004, the structure of the first floor was not in existence. The impugned notices are in respect of the unauthorised erection of m.s.angles for making a provision of first floor admeasuring of 20 X 30 feet.

4 Thus, it is obvious that the structures subject
matter of the impugned notices have been erected
after 19th July 2006 when the suit was decreed.

5 It is not the case of the petitioners that the
work of the structure subject matter of the
impugned notices has been carried out after
obtaining permission from the Mumbai Municipal
Corporation. The petitioners have invoked writ
jurisdiction under Article 226 of the Constitution
of India. The said jurisdiction is discretionary
and equitable. Considering the conduct of the
petitioners of erecting illegal construction, they
cannot be allowed to invoke writ jurisdiction under
Article 226 of the Constitution of India.

6 Moreover, in the reply filed by Shri
C.D.Chaudhari, designated Officer, it is submitted
that the petitioners have filed two suits bearing
1219 and 1220 of 2014 in the City Civil Court for
challenging the notices which are impugned in this
petition. It is stated that final orders were
passed by the Mumbai Municipal Corporation on 13th
June 2014 directing the petitioners to remove
illegal structure within 24 hours. Though ad-interim
relief was granted by the City Civil Court earlier,
it was vacated on 24th June 2014. The present
petition was affirmed on 28th October 2014. There
is no reference in the petition to the fact of
filing two suits in the City Civil Court. This is
the one more reason for not entertaining this
petition.

7 Accordingly, writ petition is rejected.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)