

Sarnobat

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

**APPEAL FROM ORDER NO. OF 6358 2018
ALONGWITH
CIVIL APPLICATION (STAMP) NO. 6359 OF 2018**

Sachin Rajaram Ghatwal. ... Appellant.
Vs.
The Municipal Corporation of Gr. Mumbai. ... Respondent.

Mr. Atul G. Damle, for the Appellant.
Mr. N. V. Walawalkar, Sr. Advocate a/w Mrs. Madhuri More for the
Respondent/MCGM.

CORAM : V. M. DESHPANDE, J.

DATE : 20th JUNE, 2018.

ORAL JUDGMENT :

1. At the outset the learned counsel on record for the appellant Shri R. D. Suryawanshi submits that within a period of 10 days he will remove all office objections.
2. The appeal by consent of learned Sr. counsel Shri Atul Damle for the appellant and Shri N. V. Walawalkar for the Mumbai Municipal Corporation is taken up for final hearing.
3. **Admit.** Taken up for final hearing.
4. The reason for approaching the appellant before this Court is his rejection of notice of motion by the learned Judge of the City Civil Court and Additional Sessions Judge, Dindoshi, Mumbai on 22nd February, 2018. The learned Judge passed the said order in notice of

motion No.435 of 2018 in L.C. Suit No. 261 of 2018.

5. The learned Sr. counsel for the appellant submitted that cause of action for filing the suit in question arose when the appellant received a notice from the officials of Mumbai Municipal Corporation. The said notice is dated 24th January, 2018. The said notice is issued against the appellant under Section 354(A) of the Mumbai Municipal Corporation Act (hereinafter referred to as “Act” for the sake of brevity). By the said notice the appellant was asked to remove the ongoing construction on the plot as mentioned in the said notice. According to the learned Sr. counsel since, the said notice was without jurisdiction, suit was required to be filed.

6. Before this Court, the submissions of the learned Sr. counsel for the appellant is that the structure which according to the Corporation is illegal is standing on a piece of land which is situated in the slum area. He therefore, submits that the Corporation is not a competent authority to issue notice under the Corporation Act. He invited my attention to Section 3Z and 3Z-1 of Maharashtra Slum Areas (Improvement Clearance and Redevelopment Act 1971). He submitted that there are documents on record which show that the piece of land is situated in the slum area. He invited my attention to page No.36 of the compilation in that behalf. He submitted that the description of the property as mentioned on the said page which a census document

given by the competent authority and the address of the applicant which can be seen from his reply to the notice under Section 354 is one and the same. For that he invited my attention to page No. 46 of the compilation which is a reply notice from the advocate of the appellant. He therefore, submitted that the Corporation has no jurisdiction. He also invited my attention to a reported case of this Court reported in **2002(1) Bombay C.R., 146** and paragraph 5 in specific to urge that no action could be taken against the structure which is situated in the slum area and which is a censused structure. He therefore submitted that the learned Judge of the Court below has erroneously passed the order impugned herein.

7. Per contra the learned Sr. counsel for the Corporation Shri Walawalkar submitted that no fault can be attributed to the order passed by the learned Judge of the Court below. He submitted that the learned Judge has considered every aspect of the matter. He submitted that from the impugned order it is crystal clear that the learned Judge has given his full consideration to all the documents filed on record, not only by the Corporation along with its reply but also the documents filed on record by the appellant himself. He therefore, submitted that no exception can be taken to the order and prays for dismissal of the appeal.

8. After hearing both the learned Sr. counsel it is clear that

the present suit which gives rise to the present appeal against order is in fact a 2nd attempt on the part of the appellant. The reply filed on behalf of the Corporation to notice of motion is part and parcel of the compilation of the present AO and it is available at page No. 61 to 68. The reply is by the officials of the Mumbai Municipal Corporation Mr. Yele. Reply shows that on 11th November, 2017 in a routine inspection, the officers of the Corporation detected unauthorized work in progress of a foundation with stone masonry at Ratnabai Chawl, Shimpoli Chikuwadi, Satya Nagar, Borivali (West), Mumbai-400 092. Therefore, a notice under Section 354 of the Act dated 13th November, 2017 was served upon the appellant and final order was also passed and was given on 17th November, 2017 and the unauthorized construction which was in progress was demolished on 20th November, 2017 and 23rd December, 2017.

9. The reply further states that after the demolition of the illegal construction again on 24th January, 2018 during routine inspection they found activity of raising illegal construction on the site and therefore, the notice dated 24th January, 2018 under Section 354-A of the Act was issued which is the subject matter of the suit in question. This particular statement of fact made on affidavit remained to be controverted by the appellant by filing any rejoinder. Thus, it is crystal clear that prior to issuance of notice dated 24th January, 2018 on earlier

occasion a notice under Section 354-A on 13th November, 2017 along with final order dated 17th November, 2017 was served upon the appellant. Not only that, the illegal construction which was in progress at that particular point of time, was pull down by the Corporation on 20th November, 2017 and 23rd December, 2017.

10. The appellant did not disclose in the plaint about the receipt of earlier notice and the demolition caused by Corporation in view of that notice. The order of injunction is an equitable relief. It is a cardinal principle of law that one who approaches to the Court of law must approach to the Court with clean hands. It is expected from a litigant that the litigant should not suppress any material fact from the Court. It is expected from the litigant to disclose all the facts relating to the case. It is for the Court to appreciate this fact either his favour or against him. However, litigant is duty bound to disclose all material facts. By suppressing the material facts, in fact in my view is an attempt to pollute the stream of justice. Especially, when the equitable relief is sought for.

11. In so far as the slum area is concerned, it is to be noted following things;

- i) The notice under Section 354-A is addressed to the appellant at Ratnabai Chawl, Shimpoli Chikuwadi, Borivali (West), Mumbai 400 092.
- ii) It is not the case of the appellant that this notice was

not served on him on this address.

Thus, it is crystal clear that notice is issued on this address. The notice recites as under ;

“.... to exercise the powers and functions conferred upon him under Section 354(A) of the M.M.C. Act 1888 and whereas I am satisfied that you have unlawfully commenced/been unlawfully carrying on, erection of building/erection of work described in the Schedule below located at above addressed.

1. Schedule (Description of work)

Unauthorized construction of structures on open plot with G.I. sheet wall and A.C.sheet roof admeasuring 27.50 x 19.80 M having height 3.65 M (average) approximately work in progress without obtaining any permission from competent authority.

2. I hereby directed you to stop the erection of the said building/execution of the said work forthwith.”

12. This notice is replied by the appellant through his advocate. The reply is dated 25th January, 2018. In the reply it is stated by the advocate that he has instructions from client namely appellant having structure situated at Survey No. 163, CTS No. 128A/66A/2, Mantan Pada, Satya Nagar, Borivali (West), Mumbai 400 092. Page 36

of the compilation which is a photo copy of certified copy of census document refers Survey No. 163, CTS No. 128A/66A/2, Mantan Pada, Poisar , Borivali. The learned Sr. counsel for the appellant has heavily relied to buttress his submission on this two documents.

We cannot forget that earlier notice in respect of removal of illegal construction was issued in the year 2017. The said notice was not challenged by the appellant by filing any suit on the ground that the structure is on the piece of land situated in the slum area. Not only that the authorities of the Corporation acted upon the said notice and pull down the structure as observed on two dates in the preceding paragraph of this judgment. Even that was also not challenged by the appellant before any competent Court by stating that the Corporation has illegally pull down his structure which was situated on the slum land.

13. Further it is not the case of the appellant that with any malafide intention or to satisfy any personal grudge against him, the Corporation authorities have issued notice on his wrong address. In that view of the matter prima facie it would be difficult to accept the submissions of the the learned Sr. counsel for the appellant that the structure in question is on the piece of land situated in the slum area.

14. It is to be noted that in the present suit initially the learned Judge of the Trial Court directed that both the parties should maintain

status-quo meaning thereby, both the parties are directed to stall their hands in any way in respect of the suit structure. However, that being the position, the appellant/plaintiff continued the work with brick masonry on 30th January 2018 and 31st January 2018 on the suit site and thus, flouted the orders of status-quo that required Corporation to file notice of motion for contempt against the appellant and the said is still pending. However, the fact remains that the appellant has flouted and disobeyed the order directing to maintain status-quo and thereby, committed prejudice to the structure in question.

15. I have an advantage to note that the learned Judge of the Court below has seen the photographs of the suit structure in which the learned Judge has found that the suit structure cannot be said to be a structure wherein the appellant is having his residence.

16. Since the appellant is unable to point out effectively that the structure in question is in the slum area that too any census structure, the reliance in **Anil Madhav Gore case**, in my view is misplaced. It will be always open for the plaintiff to adduce the necessary evidence in that behalf during the course of trial. However, presently the appellant has failed to point out any prima facie case in his favour which is the most important essential ingredient for the Court for exercising the discretionary relief in favour of the litigant who knock

the door for suitable relief. Not only that as observed above, the appellant is a person who has not approached to the Court with the clean hands that also dis-entitled him from claiming any equitable relief. The impugned order shows that the learned Judge has applied his mind in correct perspective to the facts, pleadings and documents on record. It cannot be said that the available material is not considered by the learned Judge of Court below and/or the learned Judge has considered the same in perverse manner. Therefore, the learned Sr. counsel for the respondent is right in making submissions that no fault can be located in the order passed by the learned Judge of the Court below. The aforesaid discussion leads me to pass the following order;

ORDER

- I) Appeal stands dismissed.
- II) However, in the circumstances, there will be no order as to costs.
- III) It is made clear that the learned Judge of the Court below shall not get influenced by any of the observations made in this order while deciding the notice of motion for contempt taken by the Corporation Authority. All the observations made in this order are restricted only for deciding the correctness or otherwise

of the order rejecting the notice of motion taken out by the appellant/plaintiff for grant of injunction.

[V. M. DESHPANDE,J.]