

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.7278 OF 2018
ALONG WITH
CIVIL APPLICATION (STAMP) NO.7280 OF 2018

Juned Maqbool Ahmed Khan Appellant-Applicant
V/s.
Municipal Corporation of Greater Mumbai Respondent

Mr. Vishal Kanade, I/by Mr. Makarand Bakore, for the Appellant-Applicant.

Mr. J. Rais, Senior Counsel, a/w. Mrs. Madhuri More, for the Respondent-MCGM.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH SEPTEMBER, 2018.

P.C. :

1. Heard Mr. Kanade, learned counsel for the Appellant-Applicant, and Mr. Rais, learned Senior Counsel for the Respondent-Municipal Corporation.
2. This Appeal takes an exception to the order dated 23rd February 2018 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.1817 of 2015 filed in L.C. Suit No.1114 of 2015.
3. The said Notice of Motion was taken out by the Appellant herein,

restraining the Respondent-Municipal Corporation from enforcing or acting upon the notice dated 20th December 2014 and the order passed thereon dated 21st April 2015; particularly from taking any action of demolition in respect of the suit premises.

4. It is the contention of the Appellant that, he is in possession of the suit premises, which is consisting of Ground + 2 Upper Floors. He has received the said possession from his earlier owner in the year 2014. According to him, since beginning, the suit structure is of the Ground + 2 Floors and it is in existence since prior to the datum date 1st April 1962 i.e. the date of toleration. He is paying necessary charges for the same and he has also applied for urgent tenantable repairs and transfer of tenancy in his name. For that purpose, he has executed the 'Indemnity Bond' and 'Undertaking' etc. and hence, according to him, the notice issued by the Respondent-Municipal Corporation, under Section 351 of the Mumbai Municipal Corporation Act, 1881, and the order passed thereon of demolition of the suit structure on the ground that the suit structure is illegal and unauthorized, is not correct and, therefore, the Trial Court should have granted the relief of interim injunction, restraining Respondent-Municipal Corporation from taking any action in pursuance thereof.

5. To substantiate this submission, learned counsel for the Appellant

has relied upon the letter dated 28th December 2006, which was addressed to the Appellant's predecessor 'M.K. Bhaskaran'. It is issued by the 'Bombay Electric Supply Transport Undertaking', informing him that, as per their record, first meter for the suit premises was installed on 17th September 1959 and it was in the name of 'M/s. Bunayya Sheet Metal Works'. The aforesaid premises, as per their record, was consisting of Ground + 2 Floors.

6. Learned counsel for the Appellant has then also relied upon the 'Lay-Out Plan', which, according to the Appellant, as can be seen from the date mentioned therein, was prepared on 24th September 1959.

7. According to learned counsel for the Appellant, both these documents are more than sufficient to show that the suit structure, consisting of Ground + 2 Floors, is in existence since prior to the datum line and, therefore, this was a fit case where, prima facie, the Appellant has succeeded in proving the legality of the suit structure and in that view of the matter, the Trial Court should have granted the opportunity to the Appellant to prove his case at the time of trial, by passing the order of interim injunction.

8. However, as rightly pointed out by learned counsel for the Respondent-Municipal Corporation, the tenement, which was given to

the Appellant, was the vacant land tenement. The very letter written by the Appellant himself to the Respondent-Municipal Corporation on 26th February 2014 also mentions that, it is a vacant land tenement with only construction of one room premises. It nowhere states that the suit premises is consisting of Ground + 2 Upper Floors.

9. The Trial Court has considered these aspects and also the fact that, at-least, when the notice was issued, there was no document showing that the construction, which was standing at the site, was carried out with the permission and getting the 'Plan' sanctioned from the Respondent-Municipal Corporation. Even the photographs produced on record, prima facie, go to prove that the suit structure, which is standing, at present, is apparently a new construction and does not appear to be a construction of the period prior to 1962.

10. In such situation, either 'M.K. Bhaskaran' or the present Appellant should have produced on record some document to show that the necessary permission was obtained from the Respondent-Municipal Corporation before carrying out this construction of Ground + 2 Upper Floors. Whatever the earlier construction, which might have been existing, is not appearing at present. In place thereof, there is totally a new construction and for which, as no permission or the 'Sanctioned Plan' is produced on record, the Trial Court has rightly rejected the application for interim injunction filed by the Appellant.

11. The Appeal, therefore, holds no merits and hence stands dismissed.

12. At this stage, learned counsel for the Appellant seeks extension of the status-quo order for some weeks, in order to enable the Appellant to approach the Hon'ble Supreme Court.

13. Learned counsel for the Respondent-Municipal Corporation, however, strongly resists this request on the count that, the suit structure is already demolished. The photographs are also produced on record to show that the suit structure is under the process of demolition and part of the same is already demolished.

14. In view thereof, the request made by the Appellant for extension of the interim order of status-quo cannot be granted.

15. Civil Application (Stamp) No.7280 of 2018 pending in this Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]