

vks

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

**APPEAL FROM ORDER (ST) NO.9655 OF 2018
WITH
CIVIL APPLICATION (ST) NO.9657 OF 2018**

Anwar Ashraf Ali Lakhani	...	Appellant
V/s.		
Municipal Corporation of		
Greater Mumbai and anr	...	Respondents

Mr. Anand A. Pandey, for the appellant.
Mr. Narendra V. Walawalkar, Senior advocate a/w Mrs.
Madhuri More, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and learned Senior Counsel for the respondent corporation.

2] This Appeal from Order is directed against the order dated 09.01.2018, passed by City Civil Court, Mumbai thereby dismissing the Notice of Motion No.4155 of 2017 in L.C. Suit NO.2457 of 2017.

3] The said Notice of Motion was taken out by the appellant herein seeking relief of temporary injunction, restraining respondent corporation from taking any action in pursuance of the Notice dated 29.6.2017 issued under Section 351 of the Mumbai Municipal Corporation Act, and the order dated 29.9.2017, passed as a result

thereof.

4] According to case of appellant, his father was the original tenant and thereafter he is tenant in respect of the suit property admeasuring area of 98.66 sq. meters which is a dwelling house and it is located at street No.39, Nishanpada. Kapadiya Brothers are the landlord in respect of the said property. They had purchased the same on 28.4.2008 from Memon brothers. On 31st August, 2011 Kapadia Brothers entered into an agreement of development with M/s B.S.B. Developers and also executed General Power of Attorney in their favour. It is further case of appellant that M/s B.S.B. Developers has undertaken repair work of the said building and while repair work was in progress, respondent Municipal Corporation has issued stop stop work notice on 11.5.2016 under Section 354(A) of the Mumbai Municipal Corporation Act, 1888 (for short called as "MMC Act), alleging it to be an illegal construction. The appellant, therefore, filed L.C. Suit No.2523 of 2016, in the trial Court in which order of status quo came to be passed on 1.11.2016. Despite that on 29.6.2017, respondent corporation has issued the impugned notice under Section 351 of the MMC Act, alleging therein that unauthorized construction of structure, from ground floor to 8th floor with R.C.C slab, brick wall, Ladi coba was carried out, without permission from Municipal Corporation. In reply to the said notice, appellant had produced the

approved plan from the Municipal Corporation, in respect of the permission granted for carrying out repairs of 8 floors in the year 1979.

5] It is submitted that the building consisting ground floor + 7 floors was in existence since the year 1979 and in view thereof, respondent corporation should not have declared that the construction standing at present, as unauthorized and illegal. However, neither the Designated Officer of the respondent Municipal Corporation, nor the trial Court has considered the said sanctioned plan and held that the structure is illegal and unauthorized. According to learned counsel for the appellant, therefore, this is a fit case where interference of this Court is warranted in the impugned order passed by the trial Court.

6] However, as rightly submitted by learned counsel for respondent, both the trial Court and the Designated Officer of Municipal Corporation have considered the approved plan, on which appellant has placed reliance and found that the appellant has not produced concerned letter bearing No.AE/15691B & F dated 10.5.1979, by which the plan was sanctioned or approved. The appellant has also not explained the source of getting this plan. The original plan is not produced before the Court. Apart from that the said plan is for seeking permission to carry out repairs and not for

undertaking any new construction. Surprisingly, the landlord himself has not come before the Court to protect his construction. It is just difficult to accept that when the Notice is issued alleging unauthorized construction of ground + 7 floors, why only the appellant, the sole occupant thereof, claiming to be the tenant, has approached the Court seeking relief of injunction in respect of his premises alone. If, as per case of appellant, there are other tenants in the said building and especially landlord and developer, none of them had come before the Court, the reason may be, because they are all hand in gloves, and by filing different suits seeking relief of injunction simultaneously or one after another. As submitted by learned counsel for respondent corporation, in respect of this very building, the description of which is given in the electricity bills produced by appellant, the suit was filed by one Haji Kasam. In that suit, ad-interim was rejected and in Appeal From Order (ST) No.29277 of 2016, this Court has rejected the relief of interim injunction, finding the said construction to be totally illegal and unauthorized. Now the tenant has come to the Court seeking same relief of interim injunction which is rejected by this Court earlier.

7] As regards the contention of the appellant that since beginning this building was consisting of ground + 7 floors; learned counsel for respondent has pointed out to this Court the deed of

conveyance executed between Kapadiya Brothers and M/s B.S.B. Developers dated 31.7.2011, which gives the list of only five tenants. One of the the tenants thereof, is on ground floor, three on the first floor and 5th tenant is on the second floor. There is no description of the tenants as occupying all the third, fourth, fifth, sixth or seventh floors of the said property; whereas recent electricity bills which are produced on record give, the names of the tenants situate on the 3rd, 4th floor of the said property, thereby clearly indicating that the original structure was not of ground + 7 floors; which is standing at present.

8] As regards the contention that major repairs and redevelopment construction for ground + 7 floors is complete, it is done despite the fact that the trial Court has granted status quo order thereby clearly indicating that the appellant could not have proceeded further with the said construction. Thus, in this case, there is disobedience and breach of the said order and also misleading of the Court. Moreover, even if the alleged plan is taken into consideration, it was of the year 1979 and that was only for repairs. It was not at all for major repairs or redevelopment of the said property. The notice of stop work was issued in the year 2016 and thereafter also in fragrant disregard to the order of status quo, further construction is carried out. No document, worth the name, is

produced by the appellant to show that this construction was carried out after obtaining requisite permission or getting the plan sanctioned for the same. The landlord or the developer are not coming before the Court to state that this construction was undertaken after the plan got sanctioned or by obtaining permission from the corporation. In such situation, this construction, is not only patently illegal but unauthorized, it being carried out in violation of the order of status quo passed by this Court, no protection can be granted to such unauthorized construction.

9] The trial Court has, thus rightly dismissed the Notice of Motion. In Appeal from Order, no interference is warranted. Therefore, the appeal, being without merits, stands dismissed with costs of Rs.1,00,000/- to be paid by appellant to the respondent corporation.

10] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and it is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]