

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO.14797 of 2018
WITH
CIVIL APPLICATION ST.NO.1478 of 2018

Delux Polymer Private Limited

.. Appellant

Versus

1 Designated Officer,
Asstt.Engineer (B & F)
G/South Ward Municipal
Office.

2 Municipal Corporation of
Greater Mumbai

.. Respondents

...

Mr.Kevic Setalvad, Sr. Advocate with Amogh Singh i/b D.P. Singh
for the appellant.

Mr.G.S.Godbole with Vidhya Gharpure and Madhuri More i/b J.J.
Xavier for the respondent BMC.

CORAM: SMT.BHARATI H. DANGRE, J

DATED : 9th MAY 2018

(Vacation Court)

P.C:-

1 The petitioner Company has approached this Court
being aggrieved by the order dated 5th May 2018 passed by the
City Civil Court at Mumbai in Suit No.1241 of 2018. By the said
order, ad-interim relief has been refused.

 Perusal of the said order makes a reference to a
speaking order from which an inference is drawn that a designated

Officer has considered every document and has come to a conclusion that those documents do not show that the structure is authorized one and the order of demolition was passed. The impugned order, therefore, records that it cannot be said that the plaintiff was not afforded an opportunity of hearing.

2 Advocate Setalwad, the learned senior counsel for the appellant invites attention of this Court to the speaking order dated 28th April 2018 which, apparently has considered several documents which are tendered by the appellant. and there is a discussion in respect of each of the document so tendered, and a conclusion is derived that the said documents are not sufficient and do not satisfactorily prove the authorization of the notice structure. However, he invites attention to the portion of the said order where it is observed that as per the copy of the approved plan dated 26th April 1977 and Tikka sheet no.408, Edition of 1980 and Sheet no.387 as well as the subsequent sheet of the year 1969 for the structure no. 107 of Lower Parel division, it is seen that notice structure is constructed near block 19 and 22-A. It is further observed that the notice structure do not reflect in the above said approved plan and Tikka sheet. Resultantly, the conclusion that is derived by the designated officer is that the said

structure of the appellant is an unauthorized construction of a commercial structure on the open land and there is no proof tendered to demonstrate that the said structure is existing prior to 1st April 1962 which is the datum line fixed by the Municipal Corporation of Greater Mumbai for tolerate commercial structure.

The designated Officer has observed that sufficient time was granted to prove the authenticity of the notice structure.

3 This order appears to be the basis and the genesis of the order dated 5th August 2018. The City Civil Court based on the said order has observed that the principles of natural justice have been followed and sufficient opportunity have been given. However, it is clear from the said order that the said order has specifically referred to the approved plan of the year 1977 and also the Tikka sheet. However, it is the specific contention of the learned counsel for the appellant that no opportunity was afforded to obtain such plan and in the reply tendered by the appellant in pursuance to the notice issued by the MCGM, a specific request was made for supplying the sanctioned plan and also certain other documents such as the Inspection Report and the photographs. The order passed by the Designated Officer takers into consideration all the other aspects of the matter i.e. the documents

that has been submitted by the appellant which would reflect that there is no proof tendered to demonstrate the structure is in existence prior to 1st April 1962. However, the said approved plan as well as the Tikka sheet has not been supplied to the appellant. In order to enable the appellant to deal with all the necessary documents and for a effective defence to the notice issued under section 351, it would be appropriate if the authorized Officer is directed to supply the documents demanded by the appellant and after affording an opportunity to deal with the said documents, the authorized officer would pass a detailed and a reasoned order. In these circumstances, the appellant is directed to remain present before the authorized Officer tomorrow and would make a demand of the requisite documents and thereupon, the said documents would be supplied to the appellant within a period of two days.

4 On said documents being supplied, the appellant would appear before the authorized officer for further hearing on 14th May 2018 and the authorized officer would pass an order after affording an opportunity of hearing before 20th May 2018.

5 In the back drop of the aforesaid observation, the Appeal is liable to be disposed of. However, the interim protection granted on 5th May 2018 would continue till the authorized Officer passes a fresh order on reconsideration of the issue.

6 It is made clear that this Court has not expressed any opinion on the documents tenders or the observation by authorized officer as far as other points are concerned and the respective contentions left open.

Appeal is disposed of.

In view of the disposal of Appeal, Civil Application does not survive and is disposed of.

(BHARATI H. DANGRE, J)