

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.446 OF 2018
WITH
CIVIL APPLICATION NO.594 OF 2018
IN
APPEAL FROM ORDER NO.446 OF 2018

WITH
APPEAL FROM ORDER NO.447 OF 2018
WITH
CIVIL APPLICATION NO.595 OF 2018
IN
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WITH
APPEAL FROM ORDER NO.448 OF 2018
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CIVIL APPLICATION NO.596 OF 2018
IN
APPEAL FROM ORDER NO.448 OF 2018

Akramal Najibul Sarkar
Through C.A. Anil Mohammed Ansari Appellant
V/s.
The Municipal Corporation of Greater Mumbai Respondent

Mr. Girish Godbole a/w. Mr. Sandeep S. Sharma, for the Appellant.

Mr. Narendra V. Walawalkar, Sr. Counsel a/w. Mrs. Madhuri More, APP for Respondent-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH SEPTEMBER, 2018.

P.C.:

1. All these three appeals are arising out of the common order dated 03.05.2018 passed by the Ad-Hoc Judge, City Civil Court, Bombay, thereby dismissing the Notice of Motion No.1267/2018 filed in L.C.Suit No.791/2018, Notice of Motion No.1584/2018 in L.C.Suit (Stamp) No.5278 of 2018 and Notice of Motion No.1620/2018 in L.C.Suit (Stamp) No.5514/2018.

2. These Notices of Motion in three different suits were taken out by the appellants herein, in respect of the one and the same subject matter, which is the building known as Vazir mansion situated at 244, Narsi Natha Street, Pydhonie, Mandvi, Mumbai. The appellants herein are the occupants of the said building. According to them, the building is a cess building and was requiring urgent repairs. MHADA authorities had therefore, time and again issued notices, warning the appellants and the other occupants of the suit building to vacate the same immediately as it has become dangerous and dilapidated. The appellants and the other occupants were shifted by MHADA in transit camp and permission for repairs was granted. The Mumbai Building Repair and Reconstruction Board (for short MBRRB) also issued “no objection certificate” and work order for carrying out repairs of the suit

building. However, the respondent Municipal Corporation has issued notices under Section 354A of the Mumbai Municipal Corporation Act, 1888 (MMC Act) on 13.03.2018 alleging that the construction work, which is being carried out, is without permission, hence, it is illegal, unauthorised, and therefore, it should be demolished immediately. Being aggrieved thereby the appellants had approached the Trial Court for the relief of temporary injunction restraining the respondent Corporation from taking any action in pursuance of the said notice.

3. These Notices of Motion came to be resisted by the respondent herein justifying the issuance of notice under Section 354A of the MMC Act and contending *inter alia* that the work undertaken at the site is not at all of repair, but it is totally a new construction. Earlier also whatever construction was on the site it was demolished by Corporation it being unauthorised. This fact was not disclosed by the appellants when they approached the Trial Court by filing the suit. It was further submitted that even the repair work for which NOC was issued, was also required to be carried out subject to the terms and conditions laid down in the MRTP and MMC Act. It was submitted that the appellants have not complied with the same and without obtaining the permission from the Municipal Corporation, a totally new construction is carried out. The said construction is apparently illegal and unauthorized and

therefore, no relief of temporary injunction can be granted to protect such illegal and unauthorized construction.

4. The Trial Court was, after perusing the documentary evidence on record, pleased to hold that as apparently the construction undertaken is totally a new construction and not in the nature of the repairs and even if the NOC was granted for the structural repairs, it was subject to the condition which the appellants have not complied with. Therefore, the Trial Court rejected these Notices of Motion.

5. While challenging the impugned order, the learned counsel for the appellant has taken this Court through the various letters issued by the MHADA, calling upon the occupants to vacate the suit building on the ground that it has become dangerous and unfit for human habitation. The first letter relied upon is dated 29.03.2014. Thereafter another letter relied upon is dated 11.04.2014 in which it was informed to the appellants that the suit building in which they were staying is taken on priority for structural repairs by the Board. The plans and estimates for the same were received from the Architect and were scrutinized in the office and as per the estimate there is an excess amount of Rs.41,59,371/- approx. which the appellants were called upon to deposit and if they failed to do so, the building will be declared beyond economical repairs under Section 88(3) of the Mhada Act, 1976 and

it will be got demolished if it felt necessary to do so. According to the learned counsel for the appellant, in pursuance thereof, even the letter was issued by the MBRRB to the Assistant Engineer (B&F), B-Ward MCGM on 16.03.2016 in which it was stated that the building is cess property, which was in dilapidated condition and is declared as dangerous building. The tenants were shifted to the transit camp by providing alternate accommodation, the estimated costs over the excess over PCL Rs.3000/- per square meter i.e. excess amount Rs.41,59,371/- was intimated to the tenants and tenants have agreed to deposit excess amount. Accordingly, the work order was issued to start the repair work. It was further stated in the said letter that the said building being in dilapidated condition requires urgent repairs and monsoon is approaching fast. Therefore, to save life and property of tenements, it was requested to do the needful.

6. According to the learned counsel for the appellant, this letter makes it clear that the permission for not only the repairs, but for construction work was also granted. The very fact that the tenants had vacated the said building and shifted to the transit camp, makes it further clear that the building was required to be demolished and therefore, permission was not only for the major repairs, but for reconstruction altogether. There is also the NOC issued by the MHADA dated 23.09.2016 wherein it was stated that the

repair work of the said building was required to be carried out and the MHADA has no objection to carry out such repair work.

7. Learned counsel for the appellant has then placed reliance on the Work Order dated 17.02.2017, wherein it was stated that this Work Order was issued for carrying out the structural repair work, including the replacement of decayed wooden members and to use structural steel of standard companies. According to the learned counsel for the appellant, therefore, this is not the case where totally an illegal and unauthorized construction was carried out, but whatever construction or repair work is done, it is as per direction and Work Order given by MHADA and as per the NOC given by the MBRRB and also on the payment of the requisite deposit amount. Hence, such construction cannot be allowed to be demolished at the interim stage.

8. The learned counsel for the appellants has in this respect also placed reliance on Section 44 of The Maharashtra Regional & Town Planning Act, 1966 (MRTP Act) to submit that whenever the permission for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board of the Bombay Slum Improvement Board established under the Maharashtra

Housing and Area Development Act, 1976 is granted, then no separate permission from the Municipal Corporation is required. It is urged that the Trial Court has not considered all these aspects of the case and hence, the impugned order passed by the Trial Court is required to be quashed and set aside.

9. However, in my considered opinion, as rightly submitted by the learned counsel for the respondent, whatever permission was granted by the MHADA or even NOC issued by MBRRB, it was only for repair work of the suit building and not for total reconstruction of the building. The various letters issued by MHADA and NOC given by MBRRB, on which the appellants are placing reliance, are also more than sufficient to show that the permission and NOC were given for repairs of the suit building that is the very subject matter mentioned in letter dated 11.04.2014 is “Repairs to the building”. Even the NOC dated 16.03.2016, which is produced on record and on which reliance is placed also states that “the said building requires urgent repairs”. The amount was also called upon to be deposited towards “the repairs”. The MHADA had issued the NOC dated 23.09.2016 which also speaks about the repairs of the building and not the total new construction.

10. Moreover, the letter issued by the MHADA lays down the essential condition that even for the repair work, the appellants should obtain the

requisite IOD and CC from the Municipal Corporation. There are further conditions laid down in the said letter, to be complied with by appellants before undertaking the repair work also. The work order dated 17.02.2017 also speaks about “the repair of the building” and does not at all speak about the reconstruction or total new construction of the building. Admittedly, the appellant has not complied with the conditions laid down in the permission letter or in the NOC. The appellants have not obtained the IOD and CC etc. to carryout the repair work. Moreover, as per the affidavit and photographs filed on record by the respondent whatever the construction is carried out at present is totally a new construction and that too after the demolition of the earlier construction. It is not at all in the nature of the repairs.

11. It is pertinent to note that in the affidavit-in-reply filed by the appellant also in Para 4 he has admitted that the building is repaired and “reconstructed”. Therefore, it follows that the reconstruction of the building is not disputed. It is pertinent to note that, MHADA which has granted permission for repair work, has also taken objection to the construction undertaken by the appellants on the ground that it is totally a new construction and not in the nature of repair. Learned counsel for the respondent has in this respect drawn attention of this Court to the letter issued by the MHADA on 26.03.2018 taking objection to the totally new work

being undertaken by the appellant and called upon the Municipal Corporation to take requisite action. Therefore, MHADA has also, vide this letter dated 26.03.2018 acknowledged that the appellants are carrying out unauthorized development. It was also stated in the said letter that the appellants had not undertaken any repair work, but they are doing development work, and therefore, the Municipal Corporation should take necessary action against the said work.

12. In view thereof, the submission advanced by the learned counsel for the appellants that the work undertaken by the appellants was only repairs work and it was in pursuance of the permission issued by the MHADA cannot be accepted. For this new construction, no permission from Municipal Corporation was obtained.

13. As regards, the submission that in view of Proviso to Section 44 of the MRTP Act, permission of Municipal Corporation was not required, it would be needful to reproduce the said Section as under:-

“44. Application for permission for development

[(1) Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed.]

*[**Provided that**, save as otherwise provided in any law, or any rules, regulations or by-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.]*

[(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute (an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be [an Integrated Township Project] by notification in the Official Gazette or, reject the application.]"
(Emphasis supplied)

14. Thus, as per this Proviso, no permission shall be necessary for “demolition” of an existing structure, erection or building or part thereto. Therefore, what it contemplates is that permission from the Municipal Corporation shall not be necessary when the demolition of the existing structure is in compliance of a statutory notice received from a Planning Authority or a Housing and Area Development Board or the Bombay Repairs and Reconstruction Board of the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976, This Proviso nowhere states that even for carrying out the repair as per the said notice or for carrying out totally a new construction at the site,

the permission from the Municipal Corporation is not required. Such permission is always necessary except when the dilapidated building is to be demolished, but so far as erection of the building is concerned, it has to be done as per the procedure laid down in the MMC Act. Even for the repair work as already observed by the Trial Court, the compliance has not been done by the appellants of obtaining IOD and CC from the Municipal Corporation. Now admittedly the construction of suit building is completed upto 10th floor. As rightly submitted by the learned counsel for the respondent, the appellant has cleverly not given the description of the earlier building, thereby trying to mislead the Court.

15. In view of all these facts on record, the Trial Court has rightly rejected the Notices of Motion filed in the suits. In Appeal From Orders, no interference is warranted in the impugned order passed by the Trial Court. The Appeals, therefore, being without merit stand dismissed.

16. In view of dismissal of the Appeals, nothing survives in the Civil Applications and they are accordingly disposed of.

17. At this stage, the learned counsel for the appellants requests this Court for extension of ad-interim order passed by this Court when the Appeals were filed.

18. Learned counsel for the respondent strongly resisted the said prayer.

In my considered opinion also having regard to the facts discussed hereinabove, no case is made out for extension of such ad-interim relief. Hence, this request also stands rejected. The order of ad-interim relief stands vacated.

[DR. SHALINI PHANSALKAR-JOSHI, J.]