

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 803 OF 2014
WITH
CIVIL APPLICATION NO. 3345 OF 2012
IN
FIRST APPEAL NO. 803 OF 2014

Municipal Corporation of Greater MumbaiAppellant

Versus

Jagdishchand Harichand Mehra (Deceased)
& Anr.Respondents

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Mrs. M.R. Bhoir for the Appellant/ Municipal Corporation.
Mr. Asutosh D. Shukla for the Respondents.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 13, 2018**

P.C.:

1. Admit. This Appeal is heard finally at the stage of admission,
as the issue involved is short.

2. This Appeal is directed against the judgment and decree dated
9th March, 2011 passed by the learned Judge, City Civil Court,

Bombay in L. C. Suit No. 1718 of 2007. The appellant / Municipal Corporation has issued stop work notice to the respondents/plaintiffs under section 354A of the Mumbai Municipal Corporation Act. The plaintiffs/ respondents have filed the suit challenging the impugned notice dated 27th April, 2007 issued under section 354-A of the Mumbai Municipal Corporation Act and the consequent order dated 17th May, 2007 passed therein in respect of the suit structure owned by the respondents situated at Harichand Textile Mill Compound, Ground Floor, L.B.S. Marg, Vikhroli (West), Mumbai. As per the case of the appellant i.e., Municipal Corporation, the suit structure was extended by the respondents/ plaintiffs without obtaining permission of the Municipal Corporation. The Assistant Engineer, 'N' Ward gave notice to the plaintiffs, as the construction was being unlawfully carried out by them. The plaintiffs have filed the suit for declaration that the impugned notice is illegal and bad in law and also for injunction that the Municipal Corporation shall not demolish the suit structure. The defendant/ Municipal Corporation appeared, but did not file written statement. The issues were framed by the trial Court, out of which, the main issue was whether the notice issued under Section 354-A of the Mumbai Municipal Corporation Act and the consequent order dated 17th May, 2007 passed therein are

sustained and justified in respect of the suit structure. Respondent no.2/ plaintiff no. 2 i.e., Sunil Mehra has examined himself and he was cross examined by the counsel of the Municipal Corporation. However, the defendant/ Municipal Corporation did not tender any evidence. The trial Court, after considering the evidence, has decreed the suit mainly on the ground that the notice which is issued under Section 354-A of the said Act is in fact not a notice under the said Section, as the structure was already in existence when the notice was issued by the Municipal Corporation. Hence, this First Appeal.

3. The learned Counsel for the appellant/ Municipal Corporation has submitted that after issuance of the impugned notice, construction of the suit structure was completed and the notice issued under Section 354-A of the Mumbai Municipal Corporation Act is legal. She relied on the order dated 2nd June, 2007 passed by the Assistant Engineer, 'N' Ward, wherein the Officer has discussed how the structure is unauthorized and the notice issued is legal.

4. The learned Counsel for the respondents opposed this Appeal. He has pointed out that the learned Judge of the trial Court has

allowed the Municipal Corporation to take further action, which may be permissible under Section 351 of the Mumbai Municipal Corporation Act, but he has declared that the notice issued under Section 354-A of the said Act is bad in law.

5. Perused the impugned order. The learned Judge of the trial Court has relied on the judgment of this Court in the case of ***Sub-Vijay International Pvt. Ltd. V/s. Commissioner & another*** reported in ***2007 (3) BOM. C.R. 337***. In this case, this Court has held that the requirement of drawing of panchnama at the site as also taking of the photographs of the structure or unauthorized extension to be demolished. The photographs should also indicate the date when same were taken. The notice was issued under Section 354-A by the Municipal Corporation and, therefore, initially the fact is to be proved by the Municipal Corporation that the notice was issued when the construction work was going on or construction work was completed. It is necessary for the concerned Officer to carry out Panchnama of the construction so also to take digital photographs disclosing the date of the photographs. I am of the view that the order passed by the learned Judge of trial Court is correct especially when no evidence is tendered by the Municipal Corporation to revert

this fact. No interference is required in the order dated 9th March, 2011 passed by the learned Judge of the trial Court. However, the Municipal Corporation is at liberty to take action under Section 351 of the Mumbai Municipal Corporation Act, if the said structure is unauthorized.

6. In view of the above, First Appeal is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)