

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.293 OF 2017**

Kamal Cooperative Housing Society Ltd. ... Appellant
Vs.
Municipal Corporation of Greater Mumbai & anr. ... Respondents

Mr.G.S. Godbole with Jyoti Ghag, Rajendra jain I/b M/s.Thakore
Jariwala & Associates for the Appellant
Mr.H.Bhave with Mrs.M.R. Bhoir for Respondent / Corporation

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 24, 2018**

P.C. :

1. Heard. Admit.
2. By consent of the parties, Appeal called out at the admission stage as the parties are ready to go ahead with the matter and so also the issue in the appeal is in respect of road widening which cannot be kept pending for a longer time.
3. This appeal is directed against the judgment and order dated 10.10.2016 passed by the learned judge of the City Civil Court, Greater Mumbai thereby dismissing the L.C. Suit No.1705 of 2000. The plaintiff is a cooperative society situated at 169, Walkeshwar road, The respondent/Corporation i.e., the original defendant, gave notices dated 10.8.1999 and 10.3.2000 informing that the

Corporation wants to take possession of a part of the plaintiff's building which includes a wall and garage. The respondents gave notice u/s 299 of the Mumbai Municipal Corporation Act on the ground that the portion of the land of the appellant/society is required for the purpose of road widening of Walkeshwar Road and is falling within the regular line of the street.

4. The plaintiff has averred and pleaded that the Corporation cannot obtain the lands or garage standing on the land of the society by giving notice u/s 299 of the Mumbai Municipal Corporation Act. The notice is illegal and, therefore, it is not to be implemented and is to be declared as bad in law. The defendants, after notice, filed their written statement contesting the said suit and justified the action of acquiring the land of the society for the purpose of road widening u/s 299 of the Mumbai Municipal Corporation Act and prayed that the suit be dismissed. The trial Court framed issues on the point of legality of the impugned notices dated 10.8.1999 and 10.3.2000. The plaintiff/society in all, examined four witnesses including the office bearers of the society and the defendants examined one witness i.e., the Assistant Engineer of the Corporation.

5. The parties produced documents especially the plan of survey of Walkeshwar road and other documents. The learned Judge after considering the oral as well as documentary evidence and the law, dismissed the suit. Hence, this appeal.

6. The points of determination in this appeal are as follows:

i) Whether the garage and the wall around the society constitute building and hence, excluded from the ambit of section 299 of the Mumbai Municipal Corporation Act?

ii) Whether the action of the Corporation and the impugned notices issued by the Corporation u/s 299 is legal?

7. Mr.Godbole, learned Counsel appearing for the appellant/society, has submitted that the action of the Corporation is high handed without following the proper procedure under the Mumbai Municipal Corporation Act. He has submitted that in view of sections 297, 298 of the Mumbai Municipal Corporation Act, no action can be taken u/s 299 of the Mumbai Municipal Corporation Act. He further submitted that the impugned notices are vague as no specifications of the structures are mentioned. He submitted that it is necessary for the Corporation to follow due process of law

before taking any action of acquisition or demolition of the structures and acquisition of the land of the society. For the purpose of the word 'structure' u/s 299, he relied on the ratio laid down by the Supreme Court in the case of **Indian City Properties Ltd. & anr. vs. Municipal Corporation of Greater Mumbai**¹. He submitted that the garage is not ancillary but an essential structure. It is a permanent structure and not a temporary one and, therefore, it cannot be demolished. He further submitted that there are many other buildings and their portions which are coming within the prescribed roadline on Walkeshwar road, and thus, the Corporation cannot take such action in a high handed manner of demolition and acquisition.

8. Per contra, the learned Counsel appearing for the Corporation, has submitted that the Corporation has taken the action for the purpose of road widening and has power to demolish the structures or acquire the structures and for that purpose, notice u/s 299 is issued against the society. He submitted that the garage standing on the land is unauthorised. It is not shown in the approved plan. So also, the wall around the building, the edges coming in the roadline of broadening the Walkeshwar road, is to be

1 (2005) 6 SCC 417

acquired for the said purpose. He justified the judgment and order passed by the learned Judge of the trial Court wherein the Judge has held that the garage and the wall is not a part of the main building. But these are ancillary structures, which are covered u/s 299 of the Act.

9. The issue is very short as to whether the garage and the wall is a building as contemplated u/s 299. It useful to reproduce section 299 as follows:

“299. Acquisition of open land occupied by platforms, etc., within the regular line of a street.

(1) If any land not vesting in the corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is with in the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven dear days' written notice of his intention so to do, take possession on behalf of the corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of me said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thenceforward be deemed a part of the public street:

(2) Provided that when the land or building is vested in the Government possession shall not be taken as aforesaid without the previous sanction of the Government concerned and, when the land or building is vested in any corporation

constituted by Royal Charter or by an Act of Parliament, [of the United Kingdom] or [by an Indian law,] possession shall not be taken as aforesaid without the previous sanction of the State Government.

Chapter XI of the Mumbai Municipal Corporation Act pertains to regulation of streets wherein, maintenance, construction and improvement of streets is involved as all public streets vest in the Corporation.

10. Undoubtedly, the Corporation has power to acquire land u/s 296 for improvement of the public street. The land is of the Mumbai Municipal Corporation Act, required for the purpose of widening, extension to maintain regular line on public streets or making new public street and for that lands can be acquired excluding a building if standing thereon. The Corporation has to take action for preservation of regular line in public streets. If at all, any part of the building is falling within the regular line of such street, then, the Mumbai Municipal Corporation Act empowers to the Corporation to acquire such land for purpose of broadening of the road. The plan (exhibit 64) shows that in the prescribed roadline, many structures are standing and, therefore, the Municipal Corporation has issued notice to those persons including the plaintiff/society.

11. The crux of this matter revolves around the definition and understanding of the words – “building” and “structure”, which are mentioned in section 299. In fact, the issue not *res integra*. In the case of **Indian City Properties Ltd. & anr. (supra)**, the Supreme court had an opportunity to deal with a similar issue where an outhouse, cooling room, watchman's room, were to be demolished and acquired u/s 299 of the Act wherein it is observed that the particular land if at all is not occupied by the building, then, that land can be acquired and if the structure is a building, that cannot be acquired u/s 299 of the Act. However, some other structures external to the building abutting on a public street, can be acquired. The examples of such structures are given in the section as a portion of a platform, verandah, step or any other such structure as within the regular line of such street.

12. “Building”, as per section 3(s), includes a house, outhouse, stable, shed, hut, tank (except tank of water storage of drinking water in a building or part of a building) and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever”. Thus, the structures which are ancillary and unessential to the building can be acquired u/s 299 and the

main structure and permanent structures which are part of the building, do fall within the definition of building u/s 3 and, therefore, they are outside the purview of section 299. In the case of **Indian City Properties & anr. (supra)**, the Supreme court has held in para 19 thus:

“19. The word 'structure' is used as a generic term so that while all buildings may be structures, all structures are not buildings. That structure which is not a building and is a platform, verandah, step, or some other such structure external to a building may be taken over by the Commissioner under Section 299(1) if it is within the regular line of the street. The words "some other such" must be construed as structures similar or like platform, verandah and step. The words must be read ejusdem generis with the preceding words since the word 'such' means "of the type previously mentioned" . The word "other" has also been held to indicate that it must be construed ejusdem generis . The underlying characteristic of platforms, verandahs and steps is that they are not independent structures and are external to a building, that is they are attached to the outside and form an inessential part of a building. In our opinion, therefore in order to be a building for the purpose of Section 299 the structure would have to be an independent, permanent structure. Thus there is no repugnancy if one were to read the definition of building and Section 299 and in our opinion the word 'building' has been used in Section 299 in the sense defined in Section 3(s).”

(Emphasis added)

13. Thus, the definition of 'building' in section 299, is borrowed from section 3(s). In the present case, the structure is a compound wall and a garage. The said compound wall cannot

form a building. However, the garage which is a permanent structure, is a building and, therefore, it is out of purview of section 299 of the Act. Moreover, if the Corporation wants to take action u/s 299 of the Mumbai Municipal Corporation Act and wants to acquire a portion of the land or the structure standing within the road widening line, it is necessary for the Corporation to follow the procedure under sections 297 and 298, which contemplate the notice and publication of such structures which are required to be acquired or demolished.

14. The procedure under sections 297 and 298 which contemplate notice and publication of such structures which are required to be acquired or demolished. Without following the due process of law as contemplated under sections 297 and 298, the Corporation cannot take action under section 299 of the Act. In this suit, the plaintiff has examined 4 witnesses and they said that they are not aware of the defendants' decision of road widening.

15. The learned Judge of the trial Court has misinterpreted the ratio laid down in the judgment of Indian City Properties Ltd. (supra) and has held that the garage does not come within the definition of the term 'building' and hence, notices issued under

section 299 of the Mumbai Municipal Corporation Act are valid. It is made clear that the street or open land or compound wall do not constitute a building and the acquisition of such structure or the land is permissible under section 299, however, only after following the procedure contemplated under sections 297 and 298 of the Act. In view of this, the judgment of the trial Court that of dismissing the Suit is hereby set aside and the suit is decreed. The notices dated 10.8.1999 and 10.3.2000 are bad in law and the Corporation is restrained to take action unless the Corporation follows due process of law. It is made clear that the road widening is for public purpose in view of the tremendous increase in the vehicular traffic on the road in the city. The Corporation is at liberty to take appropriate steps for the purpose of demolition and acquisition either under Mumbai Municipal Corporation Act or under the MRTP Act or any other act which is applicable hereto only after following due process of law.

16. Appeal is disposed of accordingly.

(MRIDULA BHATKAR, J.)