

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

**APPEAL FROM ORDER NO.4 OF 2018
WITH
CIVIL APPLICATION NO.5 OF 2018**

Mohammed Kaleem Abu Salim Khan & ors. ... Appellants

Vs.

1.Designated Officer,
Assistant Engineer (Building & Factories) & Ors. ... Respondents

Mr.A.A. Shaikh for the Appellants

Mr.N.V. Walawalkar, Senior Advocate with Mrs.Madhuri More , for
Respondent Nos.1 & 2

Mr.Firoz Bharucha i/b S.S. Bangera for Resp. No.3

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 5, 2018

P.C. :

1. This Appeal is directed against the order dated 6.12.2017 passed by the learned Judge, City Civil Court in Draft Notice of Motion in L.C. Suit No.2662 of 2017. The suit structure which is ground plus 5 storied building, according to the Corporation, is totally unauthorised. The said building was demolished in 2013

and thereafter the landlord constructed the present building and again notices were issued.

2. The plaintiffs are the tenants in the premises and they have filed the suit. Today, the landlord has appeared and the learned Counsel submits that he has secured all the permissions and the necessary documents, plans, etc. from his predecessor in title and also the building completion certificate. He submits that the building was constructed and the building completion certificate was given on 4.4.1962.

3. Learned Senior Counsel appearing for the Corporation submits that the respondent/landlord has filed Suit No.1646 of 2013 and in the said suit, ad-interim relief was rejected by the trial Court and the said order was confirmed by this Court by order in Appeal from Order (Stamp) No.14533 of 2013. He further submitted that all the plans of the premises that are obtained, are bogus and the said building was demolished between 24.1.2013 to 21.3.2013. He submits that the order of this Court was not challenged further. He further submits that one person namely, Mr.Phulwala, one of the tenants, had earlier filed a similar suit resisting the notice of demolition issued by the Corporation.

However, he could not succeed in the trial Court as also the High Court. He submits that this is another attempt to save unauthorised construction of the building.

4. Considering these submissions, it appears that the landlord is the one, who is responsible for the construction of the building and then giving accommodation to the tenants. The landlord may file all his documents in the trial Court or before the Corporation. The trial Court may consider these documents at the time of hearing of the Notice of Motion.

5. On perusal of the impugned order especially paras 9 and 10, it appears that the I.O.D. and the documents pertain to some other property than the suit building. In view of this, I do not find any reason to interfere with the order passed by the trial Court. Accordingly, the appeal is dismissed.

6. Civil Application No.5 of 2018 also stands disposed of.

(MRIDULA BHATKAR, J.)