

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (STAMP) NO.35171 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.35172 OF 2017**

Siddharth Vikas Mandal

... Appellant

Vs.

Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.J.H. Ramugade i/b C.P. Gopal for the Appellant
Mr.A.Y. Sakhare, Senior Advocate with Ms.Madhuri More for
Respondent – Corporation

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JANUARY 5, 2018

P.C.:

1. Admit. By consent, the appeal is taken up for final hearing forthwith and heard.
2. This Appeal from Order is directed against the order dated 27.11.2017 passed by the learned Judge of the City Civil Court at Bombay, in Notice of Motion No.3299 of 2017 in L.C. Suit (stamp) No.10143 of 2017.
3. The suit premises described in the suit is a shed/structure. A notice was issued by the Respondent – Corporation for demolition of

the suit premises i.e., shed and other structure constructed on a small portion of Dr.R.G. Bhandare Play ground situate at Station Road, Tagore Nagar No.1, Vikhroli (East), Mumbai – 400083. This brick masonry platform admeasuring 30'X20' with a height of 2.6' shed are standing on the Corporation land. The first notice was issued on 29.3.2017 by the Assistant Superintendent of Gardens, S-Ward, calling upon the plaintiff to produce documents for inspection in respect of the structure. However, no documents were produced and so the Superintendent of Gardens *vide* order dated 18.4.2017 directed the plaintiff to remove the unauthorised structure. Accordingly, the plaintiff itself has removed the structure. Thereafter in April, 2017, the Assistant Superintendent of Garden inspected the premises and an inspection report dated 27.4.2017 of removal of the shed and unauthorised structure was filed before the trial Court. In the month of June, on 7.6.2017 the Superintendent of Garden, S Ward, issued another notice to the plaintiff to produce the documents and stop erecting new construction. On 8.6.2017, when the Corporation tried to remove the construction, at that time, the plaintiff stopped the action of the Corporation by calling people. On 9.6.2017, the Superintendent of Gardens again sought information and on 12.6.2017, the Corporation again issued notice to the plaintiff

to produce the documents and permission for installation of the statue of Dr.Babasaheb Ambedkar at the suit premises. The Corporation, with police protection, tried to take action in the month of August and September, 2017, however, it was not possible because of the agitation and protests made by the public, who gathered near the statue of Dr.Babasaheb Ambedkar. Then, the Suit bearing Suit (Stamp) No.10143 of 2017 was filed by the plaintiff/appellant in September, 2017. Notice of Motion bearing No.3299 of 2017 filed in the said suit was heard finally and it was rejected on 27.11.2017.

4. Mr.Ramugade, the learned Counsel for the appellant, has submitted that the appellant/plaintiff is a social organisation / activist and it is helping people in that locality in various ways. It is supported by leaders in the vicinity. The structure is 15 to 16 years old. The statue of Dr.Babasaheb Ambedkar was installed at that time by the said organisation, namely, Siddharth Vikas Mandal. The main submission of the learned Counsel was that the statue of Dr.Babasaheb Ambedkar cannot be removed from that place as it was installed long back i.e., prior to 2005, and the feelings of the people in the vicinity will be hurt and so, it cannot be shifted from that

place. He submitted that the order passed by the learned trial Judge is illegal and hence, it is to be set aside and consequently, protection be granted to the structure. He submitted that the plaintiff has filed an application for regularisation of the structure and the statue, yesterday and that may be considered by the Corporation and till then, the structure and the statue be protected.

5. Mr.Sakhare, the learned Senior Counsel appearing for the Respondent – Corporation, has supported the order of the trial Court and pointed out that no permission was sought for installation of the statue of Dr.Babasaheb Ambedkar. He relied on the Government Resolution dated 2.5.2017 issued by the G.A.D. of the Government of Maharashtra about a policy on giving permission for installation of national leaders and great persons. He submitted that the Corporation is an owner of the Garden since 1974 and neither the structure nor the statue is installed since last 15 to 16 years but it is installed only 3 to 4 months back just to protect the suit structure constructed by the appellant/plaintiff.

6. Perused the impugned order as also the plaint. The structure, i.e., the shed / platform which is constructed by the plaintiff is *prima facie* unauthorised as neither any permission to construct it nor any

documentary proof of its existence prior to 1964 is produced. The record shows that earlier, it was demolished in 2017 by the plaintiff itself and again, it is reconstructed and hence, no protection can be granted.

7. The main issue raised in this Appeal from Order is about shifting of the statue of Dr.Babasaheb Ambedkar. On perusal of the plaint, surprisingly, it is found that the plaintiff has not mentioned a word in the plaint about the existence of statue of Dr.Babasaheb Ambedkar or its installation or protection. There are no pleadings either in the plaint or in the Notice of Motion. The trial Judge however, in his order has referred to this issue of shifting of the statue of Dr.Babasaheb Ambedkar and has mentioned that the statue was installed after September, 2017. There is no whisper about the statue of Dr.Babasaheb Ambedkar in the plaint or Notice of Motion. Thus, apparently, the appellant/plaintiff has installed the statue of Dr.Babasaheb Ambedkar with an ulterior motive to save its structure. This act of the plaintiff is highly objectionable as the name and fame of the great national leader, who is the framer of the Constitution, cannot be abused by the plaintiff/appellant by installing the statue for its personal or political gain.

8. The Supreme Court in the case of **Union of India vs. State of Gujarat**¹ gave specific laudable directions for seeking and giving permission for installation of the statues of national leaders and great persons. In the said case, the Supreme Court was dealing with the installation of the statue of late Shri N. Sundaran Nadar, Ex-Deputy Speaker of Keral Legislative Assembly near Pooval Ropad in the curve turning to the KSRTC Bus stand on the Kanyakumari National Highway. The Supreme Court has gave specific directions as follows:

“We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places.The above order shall also apply to all other states and union territories.

9. In response to the said directions, the State of Maharashtra has issued the Government Resolution dated 2.5.2017 and laid down guiding principles by revising its earlier policy of 2005. Those principles are required to be followed by the persons, who want to install the statues. As per the said G.R., a permanent statue committee is constituted consisting of the District Collector as

1 Petition for Special Leave to Appeal (Civil) No.8519/2006 - order dated 18.1.2013

President; Commissioner, Municipality/Chief Executive Officer, Zilla Parishad/Municipal Corporation / Municipal Council; Commissioner of Police/District Superintendent of Police; Executive Engineer as Members and Resident Deputy Collector of the District as the Member Secretary. As per the guiding principles, no person or organisation or institution is permitted to install statues of national leaders or great persons on Government, Semi-Government or private land, without due permission of the Committee and the Collector. These principles are to be strictly followed as such issue is proved to be very sensitive and the feelings of the people towards these great persons, can be taken care of and respected so also the prestige and dignity of the statues of the national leaders and great persons can be maintained. Thus, the social provocation or instigation on these issues can be avoided by strict observance of the guiding principles so that law and order can be maintained. The appellant has failed to produce any such permission of the Statue Committee.

10. In the circumstances, the Appeal from Order is rejected. The plaintiff or the Corporation to remove the statue immediately and take care of it and if it is not possible for it, then the Corporation may take

care of the statue after shifting it. The Corporation may take further action and decision as prescribed under the guidelines.

11. In view of the dismissal of the Appeal from Order, Civil Application also stands dismissed.

(MRIDULA BHATKAR, J.)