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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.591 OF 2019

Prafulla Jaya Shetty ...Appellant
vs.
Designated Officer & Ors. ...Respondents

Mr.A.G.Damle, Senior Advocate a/w Amol Singh I/b
D.P.Singh for the Appellant
Dr.Abhinav Chandrachood I/b Shri Shailendra J. Singh
for the respondent No.7
Ms Madhuri More for MMC.

CORAM : M.S.KARNIK, J.
DATE : JULY 10, 2019

P.C.:

1 Heard the learned senior counsel Shri Damle for
the appellant, Dr.Chandrachood for respondent 7 and
Ms More for Mumbai Municipal Corporation.

2 The order under challenge is dated 12th April
2019 passed by the City Civil Court Mumbai. The
said order is passed in the Notice of Motion No.836
of 2019 taken up by the appellant-plaintiff in
L.C.Suit No.3239 of 2017. The said Notice of Motion
is taken up by the appellant to restrain the
defendants from taking action pursuant to the order
passed by the Technical Advisory Committee and to
restrain them from taking action pursuant to the
order dated 26th February 2019. In short the
challenge is to the notice issued under section 354

of the said Act issued on 14th October 2015.

3 The dispute essentially is in respect of the garage which is situated adjacent to Umrai Sadan building. It is the case of the appellant that he came in possession of the garage in the year 1996. The landlord of Umrai Sadan put the appellant in possession of garage. It is the case of the appellant that at the behest of the landlord, Corporation issued notice under section 354 of the said Act in respect of Umrai Sadan. Learned senior Counsel Shri Damle submitted that the garage which is in occupation of the appellant is a separate and independent structure and it has nothing to do with Umrai Sadan building. He invited my attention to notice under section 354 of the said Act to indicate that even the notice is in respect of ground plus four storied structure. He pointed out that the notice does not make any mention of the garage. He would also invite my attention to the assessment order passed by the Municipal Corporation which was of 23rd May 2015. Relying upon assessment order, Shri Damle would submit that the garage is independently assessed and Umrai Sadan is also assessed separately.

4 He also relied upon the speaking order dated 26.2.2019. Inviting my attention to the remarks in the speaking order, Shri Damle pointed out that even the Designated Officer noticed that though the garage is an independent structure, as the said

garage is very close to Umrai Sadan, in case of demolition of the building there is imminent danger to the garage. Shri Damle submitted that the garage is an independent structure. Relying upon the additional affidavit filed on behalf of the appellant, he invited my attention to the affidavit cum indemnity bond dated 26th May 1999 and the sanctioned plan of 1960 in respect of the garage. Shri Damle would submit that there is approved plan dated 17th June 1960 to indicate that there exists a garage which has been duly sanctioned. He also relied upon affidavit cum indemnity bond of the landlord which mentions that there is a garage adjacent to Umrai Sadan building. Shri Damle would therefore submit that having regard to these circumstances it is more than clear that the garage is an independent structure and it has nothing to do with Umrai Sadan Building. According to him, with a view to demolish the garage, the respondents are now trying to contend that the garage is very much part and parcel of Umrai Sadan building.

5 On the other hand, Shri Chandrachood inviting my attention to the rent receipts, would submit that the same are clear indicator that the appellant is in possession of the garage as a tenant of Umrai Sadan Building. He also invited my attention to relevant orders. He would submit that even the appellant has stated that he has taken possession in 1996 and he is paying rent periodically which has been accepted by the defendant No.3. He further

relied upon notice dated 4th November 2015 issued by the Advocate for the appellant to the Corporation wherein it is indicated that in the said building i.e Umrai Sadan the appellant has a garage. For this he has invited my attention to paragraph 4 of the notice. Shri Chandrachood then relied upon fire brigade NOC of the Municipal Corporation. It is clearly mentioned that the Fire Brigade NOC is granted to the appellant at Umrai Sadan building. Shri Chandrachood then relied upon sanctioned plan of 1971 in respect of Umrai Sadan which was constructed in 1971. In the sanctioned plan, the garage is shown as part and parcel of the said building. He would submit that once the garage has been shown as part and parcel of the sanctioned plan, it would not be open for the appellant to contend that Umrai Sadan is a separate building.

6 Heard the learned senior counsel for the appellant and the learned counsel for the respondent. No doubt the structures are separately assessed for revenue purposes. However, the assessment receipts are for the purpose of payment of revenue to the Corporation and is by itself not sufficient to indicate that the structures in question are independent structures. Sanctioned plan dated 10th April 1971 is a clinching piece of material to show the status of structures. The said sanctioned plan clearly shows that the garage is very much part and parcel of Umrai Sadan building. The rent receipts clearly show that the appellant is

a tenant of Umrai Sadan building. So far as sanctioned plan relied upon by the learned counsel for the appellant which is of the year 1960 is concerned, there is communication of the Corporation to the respondent No.7 that the details of the same are not available in the office record. In any case, after the sanctioned plan of 1971 which clearly indicates existence of garage, reference to the sanctioned plan of 1960 is inconsequential. In my opinion, based on the materials on record, it is difficult to hold that garage is an independent structure.

7 Merely because the garage is not mentioned in Sec.354 notice would not form the basis for the Appellant to contend that the garage is excluded from the purview of sec.354 notice. Sec.354 notice when issued to Umrai Sadan Building would obviously encompass the garage which is an integral part of Umrai Sadan Building. Merely because it is adjacent to the building would not mean that it is not a part of Umrai Sadan Building. I do not find any reason to interfere with the order passed by the Trial Court. The present appeal is therefore dismissed. The Appeal be kept for directions on 11th July 2019 as Shri Chandrachud wanted to place on record an Affidavit indicating what his clients are willing to offer to Appellant.

(M.S.KARNIK,J.)