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

**APPEAL FROM ORDER ST. NO. 15043 OF 2019
WITH
CIVIL APPLICATION ST. NO. 15044 OF 2019
IN
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WITH
CIVIL APPLICATION ST. NO. 15045 OF 2019
IN
APPEAL FROM ORDER ST. NO. 15043 OF 2019**

Mohd. Ismail Allabax Hirapure & ors. ..Appellants

vs.

The Municipal Corporation of Gr.
Mumbai & anr.

..Respondents

....

Shri A.G. Damle, Senior Advocate I/b. Shri Pratap Singh for
appellants.

Mrs. Madhuri More for respondents – MCGM.

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CORAM : M.S.KARNIK, J.

DATE : 28th JUNE, 2019

P.C. :

Heard learned Senior Counsel for the appellants and
learned Counsel appearing on behalf of the respondent –
Municipal Corporation.

2. The present Appeal is filed at the instance of the tenants in respect of the suit structure which comprises of a ground plus five storey. Learned Senior Counsel Shri Damle appearing on behalf of the appellants invited my attention to the notice dated 28th April, 2017 issued under Section 351(1) of the Mumbai Municipal Corporation Act, 1888 in respect of the said structure comprising of ground plus one storey. The said notice is the subject matter of challenge in the suit filed by the tenants/occupants of the said structure before the City Civil Court. The Notice of Motion was filed for appropriate ad-interim relief during the pendency of the suit. By order dated 7th March, 2019 ad-interim relief was refused by the trial Judge.

3. The matter was mentioned yesterday and it was pointed out that the Corporation is proceeding with the demolition. I had therefore asked the Counsel for the Corporation not to proceed further with the demolition and the Appeal was placed today for hearing.

4. Learned Senior Counsel Shri Damle pointed out that the landlord had challenged the same Section 351 Notice dated 28th April, 2017 in L.C.Suit (stamp) No. 5521 of 2017. A Notice of Motion No. 1976 of 2017 was filed by the landlord. By an order dated 4th July, 2017 for the reasons recorded in the said order ad-interim relief is rejected. Thereafter, the landlord approached this Court by filing Appeal From Order No. 554 of 2017. Various orders came to be passed by this Court from time to time. Suffice it to mention that this Court permitted the landlord to make an application for regularisation of the suit structure. By an order dated 25th/26th February, 2019 this Court observed that the landlord failed to make an application for regularisation in the prescribed form and therefore, ad-interim relief came to be vacated.

5. Now that the Corporation threatened demolition of the suit premises and in fact they proceeded with the demolition in respect of the part of the structure, learned Senior Counsel would submit that the tenants should not be made to suffer only

because the landlord failed to make an application for regularisation. He relied upon several documents which are annexed to the Appeal Memo in the form of property card extract, rent receipts, electricity bills, etc. to indicate that the appellants are residing in the suit structure for a long time. This in order to establish that the structure is in existence and that the appellants are occupying the premises as tenants. Shri Damle would submit that the landlord has failed to supply necessary documents to the corporation as result of which corporation is proceeding with the demolition. Shri Damle would further submit that the appellants are not in position to contact the landlord and therefore, it is not possible for them to produce any sanction or authorisation in respect of the building. Shri Damle would therefore submit that as the structure is in existence for a long time and they are the tenants of the said structure, the trial Court was not justified in refusing the ad-interim reliefs without even considering the documents placed on record.

6. He invited my attention to the order passed by the trial Court and it is one of his submissions that the trial Court has not reflected on even a single document relied upon by the appellants. He would submit that the trial Court only proceeded on the footing that as the landlord failed to make an application for regularisation, therefore admittedly the suit structure is unauthorised.

7. Per contra, learned Counsel for the Corporation Mrs. More would invite my attention to the order dated 25th/26th February, 2019 passed by this Court in Appeal From Order No. 554 of 2017 filed by the landlord. She would submit that the landlord had specifically undertaken to make an application of regularisation. Despite seeking extension from time to time, the landlord failed to make such application. She would submit that as the landlord has made an application for regularisation it presupposes that the structure in question is unauthorised and constructed without any sanction plans or permissions. She would submit that the tenants cannot claim better rights than

the landlord in so far as authorisation/permissions with regard to the suit structure. She would also invite my attention to the order dated 4th July, 2017 passed by the trial Court in Notice of Motion No. 1976 of 2017. She would submit that the structure in fact was demolished on the previous occasion. The structure was again reconstructed without any permission despite demolition. She would further submit that all these facts were not stated in the Plaint and therefore the tenants have not approached the Court with clean hands.

8. I have heard learned Senior Counsel for the appellants and learned Counsel for the Corporation at some length.

9. Admittedly the landlord had challenged Section 351 notice dated 28/4/2017 before the City Civil Court. The City Civil Court refused ad-interim relief. In an Appeal From Order preferred before this Court, this Court had permitted the landlord to make an application for regularisation. In the order dated 25th/26th February, 2019, it is already observed by this

Court that the landlord failed to make an application for regularisation and therefore, ad-interim relief granted in favour of the appellants came to be vacated.

10. Now the tenants have approached the City Civil Court challenging the same Section 351 notice. I have gone through the documents on which learned Senior Counsel Shri Damle placed reliance on. The documents are in the form of property card extract, rent receipts, electricity bills, etc. From the documents on record it clearly reveals that the structure mentioned therein is a chawl. There is no reference of ground plus five storey structure. No documents have been placed on record in the form of sanctioned plans or permissions or any authorisation to show that the structure in question is constructed with the permission of the corporation. It is just the case of the appellants that as the landlord is not cooperating, the tenants cannot be expected to produce these authorisations and permissions. This on the premise that the tenants should not be made suffer because the landlord failed to comply with the

order passed by this Court.

11. In this context it would be pertinent to refer to the observations of the trial Court's order dated 4th July, 2017 in paragraph 4 and 5 in the suit filed by the landlord :

“4. I have carefully perused the documents filed by both the parties on record. From the first inspection report dated 8.11.2016 it is clear that the construction was going on on the suit land wherein 9 RCC columns were erected of 0.3 length mtrs, 0.2 width and height was 2 mtrs. Accordingly, notice was served upon the plaintiff on 8.11.2016 on the same address. The defendant/Corporation has also filed on record letter issued by Chunabhatti police station wherein they have requested for police help for the purpose of demolition in consonance with the speaking order dated 15.11.2016. The demolition report is filed on record which is of dated 28.12.2016. It shows that under police protection 9 RCC Columns which were erected along with other unauthorized structure at Piran Buddhan Chawl, behind Municipal School, Qureshi Nagar, Kasaiwada, Haji Karamat Road, Kasai Wada, Kurla (East) was demolished on 28.12.2016. This contention is also supported by photographs. As such, from the demolition report it is clear that the whole structure was demolished and even notice of demand u/s. 354A(2) of the MMC Act was served upon the plaintiff and the Corporation has also demanded cost of the demolition. There is nothing on record to show that the plaintiff has either replied this demand notice. It is contended on behalf of the plaintiff that the structure is old one, however from the photographs filed on record by the plaintiff it prima facie shows that, it is a newly constructed building. Therefore, rightly notice u/s. 351 of MMC Act

was issued by the Corporation on 28.4.2017 and well reasoned speaking order after giving an opportunity was passed on 6.5.2017.

5. In pursuant to the previous notice dated 8.11.2016 the defendant/ Corporation has demolished the suit structure on 28.12.2016. The fact of previous demolition was suppressed by the plaintiff. In spite of previous demolition, the plaintiff has reconstructed without taking any permission. As the fact of previous demolition is suppressed it shows that plaintiff is habitual in indulging in the activities of reconstruction of the unauthorized construction. The documents filed by the Corporation are more than sufficient and speak for themselves to show that despite action of demolition, the plaintiff is bent upon indulging in the same activities and proceeding with illegal and unauthorized construction. After issuance of first notice and demolition, the plaintiff has constructed huge building which fact clearly shows that the plaintiff has scant regard for the law and order and it not deterred even by drastic action of demolition taken by the defendant/ Corporation. Not a single document is filed on record or produced to show that the plaintiff has obtained requisite permission for carrying out such huge construction of ground + 4 floors.”

From this order it is clear that despite demolition the structure has been reconstructed. That the suit structure was demolished and again reconstructed is vehemently denied by learned Senior Counsel for the appellants.

12. The fact however remains that there are no materials placed on record that the structure in question is an authorised structure. All the documents which have been placed on record indicate that these documents are in respect of a chawl. It is pertinent to note that the landlord himself having stated that he will apply for regularisation under Section 44 r/w. 53 of the Maharashtra Regional and Town Planning Act presupposes that the structure in question is not authorised. Merely because the landlord failed to make an application for regularisation will not give a right to the tenants to claim protection of a structure which is unauthorised. The record indicates that the structure was demolished on the previous occasion and reconstructed. Taking an over all view of the matter, in my opinion, this is not a fit case to interfere with the order passed by the trial Court.

13. The Appeal is therefore rejected.

14. Undoubtedly the tenants have a right to initiate appropriate proceeding against the landlord as may be permissible.

15. At this stage, learned Senior Counsel requests that in view of ensuing monsoon, the appellants may be permitted to occupy the premises for some reasonable period, otherwise they would be virtually on the streets. In the interest of justice, subject to the appellants vacating the suit premises on or before 15/08/2019, the Corporation not to proceed with the demolition. If the appellants fail to hand over the premises on or before 15/08/2019, the Corporation is free to take action of demolition. It is made clear that no further construction activities or any changes in structure as it exists today shall be made by the appellants.

16. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Applications. The Civil Applications are disposed of.

(M.S.KARNIK, J.)