

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 597 OF 2018
WITH
CIVIL APPLICATION NO. 788 OF 2018

Mohan Lokayya Shetty

... Appellant.

VersusMunicipal Corporation of Greater
Mumbai and Anr.

... Respondents.

.....

Mr. Manoj Mhatre for the Appellant.

Smt. Madhuri More for the Respondent No.1 – MCGM.

Mr. P. V. Nichani a/w Vikas Kumbhar i/b P. V. Nichani and Co. for the
Respondent No.2.

.....

CORAM : A. S. GADKARI, J.**DATE : 26th NOVEMBER, 2019****P. C. :**

1. The present appeal is directed against the Order dated 8th June 2018 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi (Branch), Mumbai in Notice of Motion No. 1795 of 2018 in L.C. Suit No. 3485 of 2017 filed by the appellant, dismissing the said Notice of Motion for seeking temporary injunction against the respondent- Corporation from implementing the notice bearing No. HE/DO2HE/ 091/351-MMCACT/ HE202NO1/08-11-2017, dated 08th November, 2017 for demolishing of the alleged unauthorised suit structure standing on City Survey No. 4470 and speaking Order passed thereon dated 25th November 2017.

2. Heard Mr. Mhatre, learned counsel for the appellant, Smt. More, learned counsel for respondent No.1-MCGM and Mr. Nichani, learned counsel for respondent No.2. Perused the entire record annexed to the appeal.

3. The record indicates that, the respondent – Corporation has issued a notice dated 8th November 2017 to the appellant under Section 351 of the Mumbai Municipal Corporation Act, 1988 (for short “the MMC Act), thereby directing him to remove unauthorised construction of Ground floor structure and Ground + First Floor structure made up of B.M. Walls, Ladi-Coba slab, A.C. Sheet roofing, Tarpaulin with Bamboos roofing etc. The sketch of said unauthorised structure is given in the said notice. The Corporation thereafter passed an Order dated 25th November 2017 thereon.

4. After receipt of the said notice and Order thereon, the appellant filed aforesaid L. C. Suit No. 3485 of 2017 in the City Civil Court at Mumbai for declaration that the said show cause notice dated 8th November 2017 and the Order passed thereon dated 25th November 2017 is bad in law, illegal, null and void and not binding upon the appellant. The appellant also sought permanent injunction against the Corporation and or its servants, agents from implementing the said notice dated 8th November 2017 and Order passed thereon dated 25th November 2017 along with other consequential reliefs. The appellant also filed aforesaid Notice of Motion No. 1795 of 2018 for interim reliefs in the said suit.

The Trial Court after hearing the parties to the said Notice of Motion has dismissed the same by its impugned Order dated 8th June 2018.

5. The record further indicates that, after hearing the pleadings advanced across the bar by the learned counsel for both the parties, my predecessor in title by its Order dated 22nd June 2018 was pleased to direct the City Survey Officer to carry out inspection and draw a map of the suit property in presence of appellant, respondent No.2 and Officers of Corporation. In the Order dated 22nd June 2018 it has been categorically recorded that, it is the contention of the learned counsel for the appellant that, the notice under Section 351 of the MMC Act was issued by the Corporation for removal of the suit structure is not standing on CTS No. 4470 of Village Kole Kalyan, Vakola Mumbai.

Apart from the said submission, a bare perusal of the plaint would indicate that, in last two lines of para No.5 of the plaint, the appellant has made a positive and categorical statement that the suit structure is not standing on the immovable property bearing no. CTS No. 4470. The said plaint is duly affirmed by the appellant after understanding the contents of the plaint before the Competent Authority appointed as per the law.

6. In this background, in pursuance of Order dated 22nd June 2018, the City Survey Officer, Bandra, Mumbai has submitted a report dated 11th October 2018 to the Registry of this Court. In the said report the concerned Officer has given a finding that, the construction erected by the appellant stands on CTS No. 4470. The record is absolutely silent about any

permission granted by the Competent Authority to the appellant to construct the suit structure. It is thus prima facie apparent that, the appellant has unauthorizedly and illegally constructed the suit structure on CTS No. 4470.

7. After perusing the entire record, this Court is of the considered view that, no prima facie case is made out by the appellant. The balance of convenience does not lie in favour of the appellant. No harm or irreparable loss would be caused to the appellant if injunction is not granted in his favour.

8. In view thereof, this Court finds that, the Trial Court has not committed any error either in law or on facts while dismissing the Notice of Motion No. 1795 of 2018 in L.C. Suit No. 3485 of 2017 filed by the appellant by its impugned Order.

The Appeal being dehors of merits is accordingly dismissed.

9. At this stage, learned counsel for the appellant submitted that, he intends to challenge the present Order before the Hon'ble Supreme Court and therefore ad-interim relief granted by this Court by Order dated 22nd June 2018 be continue for a period of six weeks from today.

Learned counsel appearing for the Corporation and respondent No.2 opposed the said prayer.

10. However, at the request of the learned counsel for the appellant, ad-interim relief granted by this Court by its Order dated 22nd June 2018 to remain in force for a period of six weeks from today.

11. In view of the dismissal of the Appeal, Civil Application No.788 of 2018 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)