

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6646 OF 2019

Neelam Kiran Shah ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai ... Respondent

Mr. Dinesh C. Shah for Petitioner.
Mr. Santosh Parad for Respondent-M.C.G.M.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 11, 2019

P.C. :

Heard Mr. Shah, learned counsel for the petitioner and Mr. Parad, learned counsel for the respondent.

2. By filing this petition under Article 227 of the Constitution of India, petitioner seeks quashing of order dated 27.03.2018 passed by the learned City Civil Court at Dindoshi, Bombay below exhibit-12 in L.C.Suit No.2296 of 2009 rejecting exhibit-12 application filed by the petitioner with costs.

3. Notices dated 17.08.2009 and 21.10.2009 were issued by Municipal Corporation of Greater Mumbai to the petitioner as to why the two garages constructed by her at the Moti Mahal Building, ground floor should not be demolished as being unauthorized structures. This has been put to challenge by the petitioner by filing L.C.Suit No.2296 of 2009 as the plaintiff before Bombay City Civil Court at Dindoshi, Bombay (Civil Court).

4. During the pendency of the aforesaid Suit, petitioner filed an application seeking a direction to the respondent i.e. the defendant in the Suit not to interfere with the possession of the two garages at Moti Mahal Building, ground floor besides dispensing with recording of evidence. In support of the said application, petitioner relied upon

certain decisions of this Court as well as of the Civil Court.

5. The said application was marked as exhibit-12.

6. By order dated 27.03.2018, exhibit-12 was dismissed with costs of Rs.2000.00 to be paid to the District Legal Services Authority. While rejecting the said application, Civil Court observed that burden was on the plaintiff to prove that the structures covered by the notices were authorized and as per approved plan. Plaintiff cannot contend that the building plan was in the custody of the defendant and, therefore, she was unable to produce the same. It was held that unless the plaintiff gave specific sanction plan number or date of the approved plan, defendant could not be directed to provide certified copy of the approved plan to the plaintiff.

6.1. Referring to the judgments relied upon by the plaintiff, it was held that reading of those judgments did not indicate in any manner that decree should be passed straight way de hors any evidence. It was mentioned that interim relief was already granted to the plaintiff and it was for the plaintiff to prove her case that the concerned structures were authorized. In this connection, reference was made to Sections 100 and 101 of the Indian Evidence Act, 1872.

7. In the course of hearing, learned counsel for the respondent has furnished a copy of order dated 28.08.2019 passed by a Division Bench of this Court in P.I.L. No.67 of 2017 (*Tushar Guru Salien Vs. State of Maharashtra*) wherein it has been held as under:

“5] Concerning a property, a suit to enforce or protect an interest in the property which is governed by a Municipal Statute, the interest protected has to be with respect to a plea that prima-facie, the structure which is being targeted is an authorized structure. Meaning thereby, the plaint must make an averment of the sanction obtained from the Corporation and must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing

the notice is neither here nor there. Thus, the *sine qua non* of such kinds of suits is a positive assertion made with reference to the sanctioned building plans.”

8. On a query by the Court as to whether petitioner has made any application before the respondent under the Right to Information Act, 2005 for furnishing with a copy of the building plan, learned counsel for the petitioner submits that petitioner has not made any such application.

9. It is well settled that burden is on the party who seeks an order from the Court to lead evidence and to prove his case. Such a party cannot insist upon the defendant to furnish documents in order to prove his case.

10. In that view of the matter, Court finds no infirmity in the impugned order passed by the Civil Court. Having said that, even now it is open to the petitioner to seek copy of the building plan and sanction order from the respondent in accordance with law. A proceeding in a Court cannot be used as a forum by the plaintiff to obtain documents or orders from the defendant.

11. Considering the above, even at this belated stage if the petitioner makes an application for adducing evidence, that may be considered by the Civil Court and necessary order may be passed in accordance with law.

12. Subject to the above observation, writ petition is dismissed.

(UJJAL BHUYAN, J.)

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