

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.20378 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.20379 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.20378 OF 2019

Manjeet Kaur

...Appellant

vs.

Assistant Commissioner & Anr.

...Respondents

.....

Mr. Joel Carlos, i/b. Mr. Tushar R. Momaiyah, for the Appellant.

Mr. Vinod Mahadik, for the Respondents-MCGM.

.....

CORAM : S.C. GUPTE, J.

DATED : 3 SEPTEMBER 2019

P.C. :

. Heard. **Rule.** Rule taken up for hearing by consent of parties.

2. This appeal from order challenges an order passed by the City Civil Court at Bombay on a draft notice of motion. By the impugned order, the City Civil Court rejected the ad-interim application of the Appellant (original plaintiff) made on the motion. The controversy concerns a notice issued to the plaintiff by the Respondent Corporation (original defendant) under Section 488 of the Mumbai Municipal Corporation Act, alleging unauthorised construction of first floor in the barrack occupied by her. It is the plaintiff's case that the barrack occupied by her always had an attic floor and that the alleged

unauthorised construction of first floor is nothing but that attic floor. It is submitted that this attic floor was there ever since the barracks were constructed and allotted, that is to say, prior to 1966. It is submitted that the plaintiff's barrack has not been assessed to municipal taxation, though some other barracks adjacent to hers have been assessed. It is submitted that these other barracks have been designated by adding the number "II" to their respective designations as is the case with the plaintiff's barrack; the barracks so designated were all having attic floor above the ground floor. It is submitted that the plaintiff could not lay her hands on the relevant material at the time when she replied to the notice under Section 488 or made her ad-interim application, but has now procured various documents, which support her case that the barracks always had an attic floor and the assessment record of all those barracks, which were designated with number "II", and which have since been assessed by the Respondent Corporation, reflect such attic floor. It is believable that when the ad-interim application was made, the plaintiff did not have in her possession these documents, which have an important bearing on the controversy before the Court. These must be considered by the Court before deciding her application for protective relief. Considering, however, that the motion has now been ripe for hearing, it is in the interest of justice that the plaintiff's motion itself is taken up for hearing after allowing her to file an additional affidavit in support of her motion, producing *inter alia* the documents, which she relies upon in the present appeal from order and, in the meantime, she be protected by an ad-interim injunction.

3. It is, accordingly, ordered as follows:-

(a) The impugned order dated 26 June 2019 is quashed and set aside.

(b) Pending the hearing and final disposal of the plaintiff's notice of motion, there will be an ad-interim injunction restraining the defendant Corporation from taking any coercive steps in pursuance of the notice under Section 488 of the Mumbai Municipal Corporation Act dated 9 April 2019 and the speaking order dated 9 May 2019.

(c) The plaintiff will be at liberty to file an additional affidavit in support of her notice of motion *inter alia* producing therewith the documents, which she seeks to rely upon in support of her case that her barrack always had an attic floor over and above the ground floor ever since the barrack was allotted to the plaintiff's predecessor. Such affidavit will be filed within two weeks from today.

(d) The Corporation may file its reply within two weeks thereafter, including its reply to the additional affidavit, if any, filed by the plaintiff.

(e) The parties shall be heard and the notice of motion may be decided as expeditiously as possible and preferably within a period of eight weeks.

(f) The appeal from order is disposed of in the above terms.

4. In view of the disposal of the appeal from order, the civil application does not survive and the same is disposed of.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2019.09.17
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(S.C. GUPTE, J.)