

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

**CIVIL APPLICATION NO. 3399 OF 2015
IN
FIRST APPEAL NO. 1117 OF 2015**

Mr. Mazhar Mukarab Khan	 Applicant
V/s.	
Municipal Corporation of Greater Bombay & Ors.	... Respondents

.....
Adv. C.K. Tripathi for the Applicant.
Ms. Sheeta Mane for Respondent No.1.
Adv. Abdul Rashid Shaikh for Respondent No.2.
.....

CORAM : K.K.Tated, J.
DATE : 30th September, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this Civil Application, applicant/original plaintiff is seeking an order of injunction restraining the respondent Nos. 2 to 4 from carrying out any further illegal construction, addition or alteration in the suit flat No. 702 & 703 of 7th floor, 103 of 1st floor, 202 of 2nd floor, of ALJ residency C.H.S. Ltd. Plot no. 49/C, Pali Naka Junction, Bandra (West), Mumbai 400 050.

3. The learned counsel for the applicant submits that, in Trial Court there was an interim relief in the Notice of Motion No. 1041 of 2009 and same was continued by this Court by an order dated 14th October, 2105. He submits that, if any unauthorized construction is carried out by the occupants of above mentioned flat, then irreparable loss will caused to the applicant. Hence, applicant preferred the present Civil Application for an order of injunction. He submits that, though the several complaint were made to the Corporation, they failed and neglected to take any further steps. Therefore, the present Civil Application to be allowed in terms of prayer clause 'a'.

4. On the other hand the learned counsel appearing on behalf of respondent No.2 vehemently opposed the present Civil Application. He submits that, the suit filed by the applicant/original plaintiff for the same cause of action was dismissed, on the ground that, applicant had failed and neglected to disclose the type of unauthorized construction carried out by the respondent/defendant No. 2 to 4 in their flat. He submit that, there is no question of granting the present Civil Application in terms of prayer clause 'a', because, if any, unauthorized construction is carried out in that case, the applicant can take appropriate steps. Thus, there is no substance in the present Civil Application and same is required to be dismissed with cost.

5. I heard both the sides in the present proceeding. The applicant/plaintiff filed L.C. Suit No. 1579 of 2009 before the Bombay City Civil Court, Bombay claimed for following reliefs.

- “(a) That this Hon’ble Court be pleased to declare the acts of defendant No. 2 to 4 of carrying out illegal construction, additions and alterations in the form of merger of two flats No. 702 & 703 of 7th floor by removal of load bearing wall, constructions of additional bathroom and toilet in flat No. 103 of 1st floor, and shifting of entrance of main doors in flat No.202 of 2nd floor carried out by defendant no. 2 to 4 in the building known as ALJ residency, palinaka jn, Bandra (W), Mumbai 400050 without the permission of MMC and in violation of the orders of various courts as more particularly set out in the plaint is bad in law and against the orders of the court and the provisions of MMC act.
- (b) That this Hon’ble Court be pleased to pass mandatory order and injunction against the defendants No.1 directing defendant No. 1 to demolish, remove and/or pull down the illegal construction, additions and alterations in the form of merger of two flats No. 702 & 703 of 7th floor by removal of load bearing wall, construction of additional bathroom and toilet in flat No.103 of 1st floor, and shifting of entrance of main doors in flat No.202 of 2nd floor carried out by defendant no.2 to 4 in the building known as ALJ residency, palinaka junction, Bandra (W), Mumbai 400050 without the permission of MMC and in violation of the orders of various courts as more particularly set out in the plaint.
- (c) That this Hon’ble Court be pleased to pass a permanent order of injunction thereby restraining the defendant No. 2

to 4 their servants, agents, or any one claim through them from carrying out further illegal and unauthorized constructions and/or additions of any nature whatsoever in the flat No. 702 & 703 of 7th floor, flat No. 103 of 1st floor, and flat No.202 of 2nd floor ALJ residency CHS ltd, Palinaka Junction, Bandra (W), Mumbai 400050 or any part and portion thereof in any manner whatsoever.

- d) This Hon'ble Court be pleased to appoint the Court Receiver of this Hon'ble Court as Receiver in respect of flats No. 702 & 703 of 7th floor, flat No. 103 of 1st floor, and flat No. 202 of 2nd floor ALJ residency CHS ltd, Palinaka Junction, Bandra (W), Mumbai 400050 under Order 40 Rule 1 of the Civil Procedure Code to protect the said building.
- (e) Pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to pass temporary order of injunction thereby restraining the defendant No. 2 to 4 their servants, agents, or any one claim through them from carrying out further illegal and unauthorized constructions and/or additions alteration of any nature whatsoever in the flat No. 702 & 703 of 7th floor, flat No. 103 of 1st floor, and flat No.202 of 2nd floor ALJ residency CHS ltd, Palinaka Junction, Bandra (W), Mumbai 400050 or any part and portion thereof.
- (f) Pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to appoint the court commissioner to visit the flats No. 702 & 203 of 7th floor, flat No. 103 of 1st floor, and flat No.202 of 2nd floor ALJ residency CHS ltd, Palinaka Junction, Bandra (W), Mumbai 400050 and submit report to this Hon'ble Court as regards the illegal additions and alterations carried out by defendant No. 2 to 4 in their respective flats of the said building.

- (g) that interim and ad-interim reliefs in terms of prayers above be granted;
- (d) that costs and professional costs of this suit be provided for;
- (e) and such other and further reliefs as this Hon'ble Court may deem fit and proper, be granted."

6. In that suit the Trial Court after considering the evidence framed, following issued for consideration

	<u>ISSUES</u>	<u>FINDINGS</u>
(1)	Whether plaintiff proves that the developer of land CTS No.C-873, C-874, C-875, C-884 and C-885 after the development agreement made with Predecessor's of plaintiff developed the said land and constructed the building consisting of ground plus five upper floors known ALJ Residency and the occupants which have formed the co-operative society known as ALJ Residency Co-Operative Housing Society Ltd ?	: No
(2)	Whether plaintiff proves that after completion of building, plaintiff shifted alongwith his family and he found that the building consisted of sixth and seventh floor was constructed in violation of the approval given by the planning authority and thus the construction of 6 th and 7 th floor building is illegal and unauthorized ?	: No, as regularization issue is pending.
(3)	Whether plaintiff proves that the defendant Nos.2 to 4 have carried out illegal construction, addition and illegal construction, addition and alteration in the form of merger of two flats No.702 and 703 of 7 th floor by removal of load bearing wall, construction of additional bathroom and toilet in flat No.103 of first floor and shifting of entrance of main door in flat No.202 in 2 nd floor is without permission of MMC and in violation of the orders of the Court and the provisions of MMC Act ?	: No.

(4)	Whether plaintiff proves that he is entitled for declaration, mandatory and perpetual injunction as sought ?	:	No.
(5)	Whether the suit is barred by law of limitation ?	:	No.
(6)	Whether the suit is bad for non joinder of necessary party ?	:	No.
(7)	What order and decree ?	:	Suit is dismissed.

7. It is to be noted that, issue No. 3 framed by the Trial Court shows that, plaintiff is failed to prove any unauthorized construction carried out by the respondent No.2 to 4. Finding given by the Trial Court on issue No. 3 shows that there is no question of any unauthorized construction carried out by the respondent No.2 to 4 in the suit premises.

8. Considering these facts and the finding given by the Trial Court on issue No.3, I do not find any substance to entertain this Civil Application. Hence, following order is passed :

- A) Civil Application stands rejected.
- B) No order as to costs.

(K.K.Tated, J.)