

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

**APPEAL FROM ORDER (ST) NO. 23008 OF 2019
WITH
CIVIL APPLICATION (ST) NO. 23011 OF 2019**

M/s.B.S.B. Developers & Anr. ...Appellants
vs.
The Municipal Corporation of Greater Mumbai & Anr. ...Respondents

Mr.Ravi P. Jadhav with Sangharsh Waghmare I/b. Shobhit Shukla for
Appellants.
Mr.N.V. Walawalkar, Senior Advocate, with Madhuri More for
Respondents.

CORAM : S.C. GUPTE, J.

DATE : 27 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 This appeal from order challenges an order of dismissal of a notice of motion passed by the Bombay City Civil Court. The notice of motion was taken out by the Appellants (original Plaintiffs) in their suit challenging a notice issued by the Respondent Municipal Corporation (Defendants to suit) under Section 351 of the Mumbai Municipal Corporation Act ('MMC Act') for eviction to enable the Municipal Corporation to carry out demolition of the suit building. The Plaintiffs' case in the suit was that the corporation was bound to issue a notice to them as owners under Section 351 of the MMC Act and give opportunity to show cause to the Plaintiffs. It was submitted that the Defendant corporation had not followed due process of law. On the other hand, it was the case of the

Defendant corporation that a notice under Section 351 of the MMC Act was indeed issued to landlord / owner / occupier on 29 June 2017. After giving an opportunity to show cause and considering the documents and submissions of the noticees, a speaking order was passed on 29 September 2017. It was also contended that before this notice was issued under Section 351, a notice was issued even under Section 354A of the MMC Act. The trial court dismissed the Plaintiffs' notice of motion in the light of observations made by this court in connected matters. The trial court was of the view that the Plaintiffs had failed to make out any *prima facie* of the notice structure being legal or authorized. The court held that even balance of convenience did not lie in favour of the Plaintiffs.

3 The record of the case does indicate that there was a notice issued under Section 351. That notice was preceded by an earlier notice issued under Section 354A. The notice was contested, as this court noted in its order dated 16 October 2018, surprisingly by a tenant, who claimed to be an occupant of the notice building. This court, on the tenant's application, not only rejected his case for interim injunction, but also observed that if there were indeed other tenants in the building as also a landlord and developer, none of them had come before the court. The court observed that the reason could well be that they were all hand-in-glove and were filing different suits seeking repetitive reliefs of injunction. The court noticed that in respect of the very building, the description of which was given in the electricity bills produced by the Appellant, an earlier suit was filed by one Haji Kasam. Injunction was refused then and thereafter, the tenant had approached the court seeking the same relief of interim injunction. So far as the merits of the case are concerned, the court noticed that the only plan which was produced before the court in support

of the Applicant's case of the structure being authorized, was a plan of the year 1979. The court observed that the plan was only for repairs and did not exhibit any major repairs or redevelopment of property. The court noticed that there was stop work notice issued in the year 2016 and despite such notice, in flagrant disregard to the order of status quo, further construction was carried out. The court noticed that on these facts, the construction was not only patently illegal but unauthorized, it being carried out in violation of a status quo order passed by this court and in the premises, no protection could be granted to such unauthorized construction. The court observed that the trial court had, thus, rightly dismissed the notice of motion and in the appeal from order, no interference was warranted. The appeal was, therefore, dismissed with costs.

4 On these facts, the landlord of the notice building has come before the court in his own suit challenging the proposed demolition. It is his case that notice ought to have been issued to him. On the facts narrated above, and also taking into account the observations made by this court earlier, it is believable that the parties have been hand-in-glove; the cause of action being the same as was not countenanced by this court earlier at the instance of other interested parties, is being reagitated by the landlord on the same facts. The only document that the Plaintiff landlord relies on in support of his case that the construction was authorized, is the same plan, which was produced by the tenant before this court in the earlier AO, i.e. the plan of 1979, which was not accepted by this court, as it was not a plan for redevelopment but only for repairs. The construction, as this court has already noted in its order on the appeal from order filed by the tenant, was in the face of a stop work notice and a status quo order passed by this

court. The construction *prima facie* appears to have come up despite the stop work notice and status quo order. On these facts, the notice building is not entitled to any protection.

5 Learned Counsel for the Appellants submits that the case of Haji Kasam Ghaneria, which incidentally was referred to in the order passed by this court on the tenant's appeal from order referred to above, was in respect of another building. It is noticed from the prayers made and pleadings filed in Haji Kasam Ghaneria's suit that the complaint was made in respect of a notice structure, bearing Building No.35/37/39. This *prima facie* indicates that the notice building, demolition of which is complained of in the present suit, was the same as in the case of Haji Kasam Ghaneria. The order passed by this court in the appeal from order in the case of Haji Kasam Ghaneria also discloses that the premises concerned were Building No.35/37/39.

6 There is, accordingly, no infirmity to be found in the impugned order of the trial court. There is no merit in the appeal. The Appeal from order is dismissed.

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

(S.C. GUPTE, J.)