

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.25879 OF 2019

Shri Vinay Ashok Dwivedi

...Appellant

vs.

Assistant Commissioner, P/South Ward And Ors....Respondents

.....

Mr. S.P. Chavan, for the Appellant.

Ms. Madhuri More, for Respondent Nos. 1 and 2 – MCGM.

.....

CORAM : S.C. GUPTE, J.

DATED : 26 SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the parties.

2. The appeal from order is taken up for hearing forthwith by consent of Counsel. This appeal from order challenges an order passed by the City Civil Court of Greater Mumbai at Dindoshi. By the impugned order, the notices of motion of the Appellant (original plaintiff) were dismissed. Though the order disposes of two motions, learned Counsel for the Appellant restricts his prayer for reliefs in Notice of Motion No.2570 of 2019.

3. The plaintiff's suit is in respect of a structure occupied by him. The structure is assessed to municipal taxation. It is his grievance

that under the garb of a notice issued under Section 354 of the Mumbai Municipal Corporation Act ('MMC Act') in respect of a building known as 'Chandralok House', the water supply to the plaintiff's structure, which is separate from Chandralok building, and which is even assessed separately by the defendant Corporation, has been dis-connected.

4. Learned Counsel for the defendant Corporation does not dispute that there has been no notice under Section 354 of MMC Act in respect of the structure occupied by the plaintiff. Learned Counsel, however, submits that this structure is in open land, forming part of the compound of Chandralok building, and is unauthorised.

5. Assuming it to be so, it is beyond doubt that the impugned action on the part of the Municipal Corporation is in pursuance of a notice issued for Chandralok building under Section 354 of the MMC Act. The notice is purportedly on the footing that Chandralok building is dangerous for human residence, having been categorised as a 'C-1' structure. In pursuance of this notice, the defendant Corporation cannot either demolish the suit structure occupied by the plaintiff or disconnect supply of water or electricity to the structure. The impugned order of the trial court clearly shows non-application of mind. The notice of motion of the plaintiff seeking protection against restoration of water supply to the suit structure, purportedly disconnected by the defendant Corporation in pursuance of the notice under Section 354 of the MMC Act, referred to above, is rejected only on the ground that there was a notice under Section 354 based on a technical advisory committee report, which could not be assailed. The trial court has lost sight of the fact that Chandralok building, in respect of which the advisory

committee report was made, and notice under Section 354 was issued, was separate from the suit structure, which is a separately assessed structure and under the guise of taking action against Chandralok building, supply of electricity or water could not be disconnected for the suit structure. Since no action is proposed as of now against the suit structure by the defendant Corporation, the plaintiff's notice of motion for restoration of water supply to his premises will have to be granted.

6. Learned Counsel for the defendant Corporation, however, submits that the supply to the plaintiff's structure was given by occupier of room no.6 in Chandralok building and what the Municipal Corporation has done is to disconnect water supply to room no.6. Even if that be so, the suit structure being an assessed structure which is not subject to any demolition or eviction notice and occupied for residence by the plaintiff, and water being a necessity of life, the plaintiff cannot be deprived of water. In any event, the supply to the suit structure will have to be reconnected, whether through room no.6 or otherwise.

7. Learned Counsel for the defendant Corporation submits that the plaintiff may apply to the Municipal Corporation to have a separate water connection to his premises. The plaintiff may do so. However, for the time being, the Municipal Corporation will have to immediately restore water supply to the plaintiff's structure through room no.6 or through other stand-by arrangement.

8. Accordingly, the impugned order passed by the City Civil Court at Dindoshi, Mumbai is quashed and set aside and Notice of

Motion No.2570 of 2019 is allowed in terms of prayer clause a(i) of the notice of motion.

9. It is clarified that the re-connection has to be made in respect of Connection No.PSB7150005.

Smita
Gonsalves

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by Smita
Gonsalves
Date: 2019.10.07
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(S.C. GUPTE, J.)