

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 28242 OF 2019
WITH
INTERIM APPLICATION NO. 01 OF 2019
IN
APPEAL FROM ORDER (ST) NO. 28242 OF 2019

Prafulla Jaya Shetty

... Appellant.

Versus

The Assistant Municipal Commissioner
and Anr.

... Respondents.

.....

Ms. R. C. Nichani for the Appellant.

Smt. Madhuri More for the Respondents (MCGM).

.....

CORAM : A. S. GADKARI, J.

DATE : 20th NOVEMBER, 2019

P. C. :

1. By the present appeal, the appellant has impugned Order dated 10th October 2019 passed in Draft Notice of Motion No. 3220 of 2019 in S. C. Suit No.2467 of 2019, dismissing the said Notice of Motion by the learned Judge, City Civil Court, Dindoshi, Mumbai.

2. Heard learned counsel for the appellant and the learned counsel for the respondents – Corporation. Perused the entire record annexed to the appeal memo.

3. The record indicates that, the Corporation has issued notice dated 27th February, 2019 to the Owner/Occupiers/Tenants of Umrai

Sadan Building, CTS No.E/814, E/815, E/816, Khar Station Road, Khar (W), Mumbai, under Section 354 of the Mumbai Municipal Corporation Act (for short “MMC Act) on the ground that, the said structure is in dilapidated and dangerous condition, for habitation of human beings.

The appellant is mother of Mohan Jaya Shetty. The appellant claims that, she is in use of and in occupation of an independent structure admeasuring 642 sq. ft. adjoining to the said building, to which notice has been issued by the Corporation under Section 354 of the MMC Act. It is the further contention of the appellant that, the said structure has been cessed by the Corporation for revenue purpose. That, the said structure is an independent structure and has not direct relation with the Umrai Sadan Building and therefore the notice issued by the Corporation to the appellant and her son is bad in law.

4. The record indicates that, in the earlier round of litigation, the petitioner was unsuccessful upto the Hon’ble Supreme Court in challenging the notice issued by the Corporation under Section 354 of the MMC Act against the same structure.

There is a Schedule appended to the fresh notice dated 27th February 2019, wherein at Sr. No. 6 the name of son of the appellant is mentioned and it is stated that, Garage No-A at ground floor admeasuring 180 sq. ft. Thus, the claim of the appellant, at the most can be restricted to the area admeasuring 180 sq. ft. pertaining to the said garage. Merely because, the appellant is paying taxes for alleged structure of 642 sq. ft.,

she can not claim the said area, from the Corporation.

5. The record, prima facie, indicates that, there is no material available on record to justify the contention of the appellant that, she is in actual use of and in occupation of 642 sq. ft of area in the said Umrai Sadan Building. Inspection report carried out by the Officers of the Corporation, does not support the contention of the appellant. The balance of convenience does not lie in favour of the appellant, no irreparable loss or harm would be caused to the appellant, if interim relief is not granted in her favour.

6. Perusal of record along with impugned Order, would clearly indicate that, the Trial Court has not committed any error while dismissing the said draft Notice of Motion filed by the appellant.

7. I find no merits in the appeal and is accordingly rejected.

8. In view of rejection of the Appeal itself, Interim Application No.1 of 2019 does not survive and is also disposed off.

(A. S. GADKARI, J.)