

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 1821 OF 2019****Raju Prabhudas Dhodi****.....Appellant****VERSUS****Municipal Corporation of Greater Mumbai****.....Respondent**

Mr.Shailesh Kumar Rai for the Appellant.

Mr.P.J.Thorat, a/w. Ms.Sheetal Mane Tadke for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 13th JANUARY, 2020****P.C.**

By this appeal the appellant (original plaintiff) has impugned the judgment dated 14th December,2017 passed by the Bombay City Civil Court dismissing L.C. Suit No. 2828 of 2012 *inter alia* praying for injunction and declaration.

2. By consent of parties, first appeal is heard finally at the admission stage.

3. It is the case of the plaintiff that the suit property was acquired by Mr.Prabhudas Manilal Dhodi, father of the plaintiff by affidavit dated 11th June, 1992. It is the case of the plaintiff that the structure was included in the census survey carried out by the respondent in the year 2000. In 2007, the respondent issued a notice alleging that the construction carried out by the plaintiff was upon the Government/Collector's land. On 31st August, 2012, notice was issued under section 314 of the Mumbai Municipal Corporation Act for

removal of the structure.

4. There is no dispute that the policy in question applicable to the impugned structure protects the unauthorized structure as on 1st January,2000 for the purpose of alternate accommodation.

5. Learned counsel for the appellant invited my attention to various documents annexed to the compilation and would submit that though the appellant had produced the ration card and several documents to show the existence of the structure prior to the datum line 1st January,2000, the Authority did not consider any of these documents and declared the suit structure an unauthorized prior to the datum line. He submits that none of these documents were verified by the respondent before submitting a report to the Authority who passed the impugned order. In support of this submission, learned counsel invited my attention to various paragraphs of the cross examination of the witness examined by the respondent before the trial court.

6. It is submitted by the learned counsel that prior to 1994, name of the appellant was shown in the ration card of his father which was deleted. The appellant had applied for separate ration card at the address of the suit structure. He invited my attention to the said ration card and would submit that the said document was one of the document eligible to be considered for the purpose of deciding the datum line and for the purpose of allotting permanent alternate accommodation in lieu of the impugned structure.

7. It is submitted by the learned counsel that the appellant was not concerned with the structure no.8 which is in the name of his father-in-

law. The respondent has mixed up the identity of structure no.4 with structure no.8. He also invited my attention to the diagram showing various structure at page 62 of the compilation filed before this court and also the photographs.

8. Mr.Thorat, learned counsel for the respondent on the other hand invited my attention to the documents referred to and relied upon by the appellant in the plaint and also those documents forming part of the compilation. He submits that none of the document referred to and relied upon by the appellant (original plaintiff) indicates the address of the suit structure but indicates the address of Santu Dhanji Chawl. He submits that there are several structures in that chawl some of which are outside the road in question.

9. Learned counsel invited my attention to the cross examination of the appellant and would submit that the appellant in his evidence had admitted that there was obstacle for the traffic due to the suit structure and causing traffic jam on the road. He submits that the electricity meter bearing no. 150107183 which was produced by the appellant pertain to suit structure. The Corporation had sent the details to the electricity company to verify about the date of the installation of such electricity meter. He submits that the electricity company however verified and confirmed that the said meter was issued only in the month of October 2005 and not prior to the datum line.

10. Learned counsel invited my attention to the photographs annexed at page 229 of the compilation and would submit that the said structure is in the middle of the road carriage way and causes obstacle and traffic jam. He submits that the said structure was not a permanent structure

and was constructed only after the datum line. It is submitted by the learned counsel that the learned Trial Court after considering the evidence produced by both the parties has rightly dismissed the suit filed by the Applicant.

11. A perusal of the averments made in the plaint and the documents produced by the appellant clearly indicate that none of the documents indicate the address of the suit structure but only refers to the address of Santu Dhanji Chawl. It is not in dispute that there are several other structures in that Santu Dhanji Chawl. It is the case of the appellant that the structure no.8 was occupied by his father-in-law. The appellant could not produce any document before the Trial Court or even before this court to show that the prior to the datum line, the appellant was occupying the suit structure bearing no.4.

12. Learned counsel for the appellant does not dispute that when the suit structure on the road was censused, no photopass was issued to the appellant. The appellant could have applied for such photopass if according to appellant the structure was censused prior to the datum line. Prior to the datum line, land in question was handed over to the respondent without any structure thereon.

13. It is an admitted position that the suit structure was in the middle of the road carriage way and causes obstacle, traffic jam and may cause accident. The suit structure is already removed.

14. After considering the evidence produced before this Trial Court and considering the findings rendered by the trial court, I do not find any infirmity in the findings rendered by the trial court. The suit is

rightly dismissed. There is no merit in the first appeal.

15. First appeal is dismissed with cost quantified at Rs.25,000/- which shall be paid by the appellant to the respondent within two weeks from today. Interim stay granted by this court, if any, stands vacated.

[R.D.DHANUKA, J.]