

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

APPEAL FROM ORDER NO.532 OF 2019
WITH
CIVIL APPLICATION NO.610 OF 2019

Mr. Anil S. Talreja

.. Appellant.
(Orig. Plaintiff)

v/s.

The Municipal Corporation of Greater
Mumbai & Another

.. Respondents.
(Orig. Defendants)

Mr. Jagdish Jayale, for the Appellant.

Ms. Oorja Dond, for the Respondent No.1-MCGM.

CORAM: A.S.GADKARI,J.
DATED : 5th FEBRUARY, 2020.

PC:-

By the present Appeal under Order 43 of the Code of Civil Procedure, the Appellant/Original Plaintiff has impugned Order dated 15th January, 2018 passed in Notice of Motion No. 14 of 2012 in L. C. Suit No.2624 of 2011, dismissing the said Notice of Motion with costs.

2 Heard Mr. Jayale, learned Counsel for the Appellant and Ms. Dond, learned Counsel for the Respondent-Corporation. Perused the record.

3 The record reveals that, the Respondent-Corporation has issued a notice to the Appellant dated 15th December, 2011 under Section 55 of the

Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.T.P. Act'), calling upon the Appellant to remove the unauthorized erection of shed in front of open space of shop known as Bharoomal's Plywood and Laminates with T's Angle Pipe and GI sheet roof of (30' x 14') + (13' x 24.6') + (40'x30') x 11' average height approx. at Anil Villa, Opposite Nanawati School, V. P. Road, Vile Parle (W), Mumbai 400 056. The sketch of the said unauthorized structure is appended to said notice. The Appellant filed its reply dated 22nd December, 2011 to the said notice. The Designated Officer of the Respondent-Corporation after perusing the records and taking into consideration the reply of the Appellant, passed Order dated 27th February, 2016, directing the Appellant to remove the said unauthorized work mentioned in the notice dated 15th December, 2011 within a period of seven days from the date of receipt of the said Order, failing which, the Corporation will undertake the work of demolition entirely at the risk and costs of the Appellant and the charges of demolition will be recovered from the Appellant.

4 Appellant, therefore, filed the aforesaid Suit being L.C. Suit No. 2624 of 2011 in the City Civil Court, Borivali Division, at Dindoshi Mumbai and prayed for a declaration that, the impugned notice dated 15th December, 2011 issued under Section 55 of the M.R.T.P. Act and the order dated 27th February, 2016 passed thereon are null, void and illegal and the Defendants therein have no right to demolish the suit structure and for other consequential reliefs.

The Appellant also filed aforesaid Notice of Motion for interim reliefs. The Trial Court by its impugned order dated 15th January, 2018 has dismissed the Notice of Motion with costs.

5 Mr. Jayale, learned Counsel for the Appellant submitted that, for erecting the suit structure, the Appellant has got permission from the Corporation dated 12th May, 1990. That the Corporation has also assessed the suit structure for collecting taxes. He submitted that, by the said permission dated 12th May, 1990, the Corporation has granted permission for erection of shed in front of open space of shop of the Appellant and no restrictions were put on the Appellant to use it for a particular period. That in the said permission, there is no direction to dismantle it and, therefore according to him, said permission is granted for perpetuity. He, therefore, submitted that the Trial Court has erred in rejecting Notice of Motion filed by the Appellant and the present Appeal may be allowed by setting aside the Order dated 15th January, 2018.

6 The learned Counsel for the Respondent-Corporation vehemently opposed the Appeal and submitted that, the Corporation has filed Affidavit in Reply to the aforesaid Notice of Motion dated 19th December, 2016 and in para No.9 of the same, the Corporation has made its stand clear that, permission to erect the said shop was for the said monsoon season and the Appellant ought to have removed the same after the monsoon period was over. That the Appellant did not remove the said shed and continued to use the same. She submitted

that, the said shed is not only unauthorized but also illegal. She submitted that, there is no merit in the Appeal and, therefore, the Appeal may be dismissed summarily.

7 At the out-set, it is to be noted that, a bare perusal of the permission dated 12th May, 1990 would clearly indicate that, permission to provide weather shed was granted to the shop owner of the suit structure in pursuant of the letter dated 4th March, 1990 addressed by him. It is clear that, the permission was granted to erect the shed in the year 1990 for the then ensuing monsoon and accordingly, suit structure was erected by the Appellant. It is to be noted here that, it is the specific contention of the Appellant that, the aforesaid permission dated 12th May, 1990 was renewed from time to time. Thus, it further makes clear that, the permission dated 12th May, 1990 was for the said year only and after the end of that particular year, it came to an end.

8 The collection of revenue by the concerned Authority of State is altogether a different aspect than having permission to erect the suit structure. Merely because the suit structure is assessed by the Corporation for collecting taxes and/or revenue, it itself *ipso facto* does not make a structure legal or authorized. Therefore the contention of learned Counsel for the Appellant that, the suit structure is assessed for collecting taxes, has no substance in it. Perusal of the record further indicates that, it is silent as to any legal approval granted by Corporation or any other Competent Authority to continue with the suit structure. There is no sanctioned plan on record pertaining to the suit structure.

9 It is to be further noted that, on the said notice dated 15th December, 2011, issued under Section 55 of the M.R.T.P Act, the Appellant gave his reply on 22nd December, 2011 and the Designated Officer of the Corporation has passed Final Order on it on 27th February, 2016 i.e. after a lapse of more than four years. The practice adopted by the concerned Designated Officer is not appreciated.

The Designated Officers of Corporation exercising its power under Section 55 of the Maharashtra Regional and Town Planning Act and/or under Sections 351 and/or 354-A of the Mumbai Municipal Corporation Act, are hereinafter directed to decide the representations made by the Plaintiff/s in furtherance of Notice issued under the said Sections, within a maximum period of 60 days, so as to avoid inconvenience to the Plaintiff/s and also to have expeditious decision on the said Notices. This may also put an embargo on the Plaintiff/s from raising a plea of delay in deciding their representation on the part of the Respondent-Corporation.

10 As there is no valid and legal permission granted to the Appellant either by Corporation or any other Competent Authority under the law to erect the suit structure, it cannot be permitted to exist under the Orders of Court.

11 The Appeal is de hors of merits and is accordingly, dismissed.

In view of dismissal of Appeal, the Civil Application No. 610 of 2019 does not survive and is accordingly disposed off.

12 At this stage, learned Counsel for the Appellant submitted that his client intends to challenge the present Order before the Hon'ble Supreme Court and, therefore, the operation and implementation of it be stayed for a period of four weeks from today. Learned Counsel for the Respondent-Corporation opposed the same.

 However, at the request of the learned Counsel for the Appellant, the operation and implementation of present order is stayed for a period of six weeks from today.

(A.S.GADKARI,J.)