

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 147 OF 2018****WITH****CIVIL APPLICATION NO. 203 OF 2018****IN****APPEAL FROM ORDER NO. 147 OF 2018**

M/S. Amit Building Material
Suppliers (I) Private Limited

.....Appellant.

Vs.

Municipal Corporation of
Greater Mumbai.

.....Respondent..

Mr. S.C. Naidu a/w Mr. Mohit Jadhav & Ms. M.R. Shigavan for the Appellant.

Mr. J.Rais, Senior Advocate a/w Mr. P.G. Lad i/by Sheetal Mane Mr. Vinod Mahadik for the Respondent MCGM in CP No. 85 of 2019.

CORAM : A. S. GADKARI, J.

DATE : 28th JANUARY, 2020.

P.C.:-

By the present Appeal, the Appellant has impugned Order dated 10th January, 18 passed in Notice of Motion No. 3020 of 2017 in L.C. Suit No. 1184 of 2017, rejecting the said Motion, by the learned Assistant Sessions Judge, City Civil Court, Greater Mumbai.

2 Heard Shri Naidu, learned counsel appearing for the Appellant and Mr. Rais, learned Senior Counsel for the Respondent-Corporation.

Perused the entire record annexed to the Appeal.

3 The record indicates that, the Designated Officer of the Respondent-Corporation has issued notices dated 28th September, 2016 under Section 55 of the Maharashtra Regional And Town Planning Act, 1966 (for short, “*the MRTTP Act*”) and also dated 31st August, 2017 under Section 488 of the Mumbai Municipal Corporation Act, 1888, (for short, “*the MMC Act*”) to the Appellant. It is stated therein that, it has been reported to the concerned Authority that, the Appellant has carried out development of temporary nature unauthorizedly, which is more specifically demarcated by way of a sketch in red colour appended to the said notice. It is further stated that, without the permission as required under the MRTTP Act, the Appellant has carried out the said development unauthorizedly. The Appellant was therefore, called upon to remove the unauthorized development as indicated in the said notice dated 28th September, 2016 within 15 days from the date of the receipt of the said notice.

4 The Appellant, therefore, filed aforestated Suit bearing L.C. Suit No. 1184 of 2017 in the City Civil Court at Mumbai for declaration that, the notices dated 28th September, 2016 under Section 55 of the MRTTP Act and dated 31st August, 2017 under Section 488 of the MMC Act are illegal and not binding on the Appellant and for other consequential reliefs.

The Appellant also filed Notice of Motion for interim reliefs.

The Trial Court, by its impugned Order dated 10th January, 2018 has rejected the said Notice of Motion.

5 Mr. Naidu, learned counsel for the Appellant submitted that, on an earlier occasion, when the Designated Officer had issued a similar notice, this Court in its Order dated 12th June, 2017 passed in Appeal From Order No. 14457 of 2017 had castigated him for issuing the said notice. He submitted that, even while issuing the present notice dated 28th September, 2016 under Section 55 of the MRTP Act, the Designated Officer has committed the same mistake. He submitted that, the Appellant, after procuring 13 permissions from different departments of either the Corporation or the State of Maharashtra, including the Maharashtra Pollution Control Board, started the said Ready Mix Concrete Plant (RMC Plant). He submitted that, as a matter of fact, the plot on which the said plant is established, falls in the Industrial Zone and the Appellant was granted permission by the Corporation for carrying out industrial activities therein. He further submitted that, the Appellant has only changed the user of the said industrial purpose from manufacturing of electric items into the RMC Plant.

 Upon a query, by this Court to learned counsel Mr. Naidu, about the necessary permission from the Corporation about the erection of the said Plant, he fairly conceded to the fact that, the concerned Department from the Corporation has not granted permission to the Appellant for erecting the said Plant.

 He further submitted that, as a matter of fact, as of today, the

Corporation has partly demolished the said structure. However, the Corporation may be further restrained from demolishing the rest of the structure of the said RMC Plant. He, therefore, prayed that, the impugned Order may be set aside by allowing the present Appeal.

6 Mr. Rais, the learned Senior Counsel appearing for the Respondent-Corporation vehemently opposed the Appeal and submitted that, the Building Proposal Department of the Corporation has not granted permission to the Appellant for erecting the said RMC Plant. He submitted that, as per the development plan, there are various other remarks over the Suit Property and therefore, the Application preferred by the Appellant for regularization of the same has already been turned down on earlier occasion by the Corporation. He submitted that, there are certain remarks put on the development plans and due to the said remarks, the permission to erect the said plant, cannot be granted by the Corporation to the Appellant. He submitted that, the impugned Order passed by the Trial Court needs no interference by this Court and the present Appeal may be dismissed.

7 Perusal of record would indicate that, neither the Corporation or any other Competent Authority has granted permission to the Appellant to erect the said RMC Plant. The record further indicates that, the Executive Engineer of the Building Proposal Department, by its communication dated 19th August, 2017 has already rejected the proposal

of the Appellant for erecting temporary RMC Plant on the Suit property. It is stated in the said communication that, there are Major Nalla remarks, High Voltage line remarks, Title Clearance Certificate and other remarks made by the Competent Authority and therefore, in view of the policy of the Corporation, the said request of the Appellant cannot be accepted.

8 As noted earlier, the Competent Authority of the Respondent-Corporation has not granted authorization or permission to the Appellant to erect the said RMC Plant at the suit property and without there being any official permission, the Appellant has erected the said plant. The Corporation has therefore, issued the notices dated 28th September, 2016 under Section 55 of the MRTP Act and dated 31st August, 2017 under Section 488 of the MMC Act to the Appellant.

In view of the above and after perusing the entire record, this Court is of the considered opinion that, the Trial Court has not committed any error either on facts or in law, while passing the impugned order.

There are no merits in the Appeal, Appeal is accordingly rejected.

In view of the disposal of Appeal itself, nothing survives in the Civil Application No. 203 of 2018 and the same is also disposed off.

9 At this stage, Mr. Naidu, learned counsel for the Appellant submitted that, in view of the statements made in paragraph No. (j) of the Affidavit dated 18th September, 2017 filed by the Sub-Engineer (Building

Proposal) E.S.M.-III, 'M' Ward of M.C.G.M., (page No. 44 to Appeal) the Appellant is advised to file a fresh Application for regularization.

As the Appellant is desirous of making fresh Application for regularization of the said RMC Plant, the prayer made by the learned counsel for the Appellant is granted in respect of the Suit property. The operation and implementation of the present Order is stayed with direction to the Corporation to maintain status-quo as of today, for a period of four weeks from today.

Sanjiv S.
Mashalkar
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by Sanjiv S.
Mashalkar
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(A.S. GADKARI, J.)