

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.464 OF 2019
AND
CIVIL APPLICATION (STAMP) NO.28064 OF 2018
IN
SECOND APPEAL NO.168 OF 2000

Gulam Mohammad Salim Khan & Ors. .. Applicants

Vs.

Pune Municipal Corporation & Anr. .. Respondents

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Ms. Kiran Bhagalia with Musharaf Shaikh i/b Krishna Kelkar for the Applicants/Orig. Respondents in both Civil Applications.

Mr. Rajdeep Khadapkar for the Appellants.

Mr. Umesh Shidnik, BI, Zone II, Pune Municipal Corporation, is present.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 06TH MARCH, 2020.

P.C:-

1. The Appeal has been admitted on 13/03/2000 and since then it is a decade. The order of stay granted in favour of the

Pune Municipal Corporation has resulted into encroachment on the plot belonging to the Applicants who have concurrent findings recorded in their favour in relation to their possession of the suit property.

2. On an earlier occasion in the year 2006, the Applicants filed a Civil Application and sought removal of the encroachment before the Single Judge of this Court on 11/10/2007. Counsel for the Pune Municipal Corporation pointed out a letter addressed to the Deputy Commissioner of Police, Circle-II, Pune to the effect that they are in need of police protection for removal of encroachment on the suit property. Based on the said statement, this Court issued a direction to the Police Department to provide the necessary police assistance to the Corporation for carrying out the drive of removal of encroachment/unauthorized construction.

3. Civil Application No.464 of 2019 now brings on record that there is further encroachment on the suit property. The Application contains a specific averment that the Pune Municipal Corporation has failed to abide by its undertaking and except stating that they are taking steps to remove the encroachment, ground reality remains that the encroachment has now taken the shape of a big structure and there is no denial of the Corporation to the said development.

4. By the present Application, the Applicants seek removal of the encroachment on the suit property and protection from further encroachment pending the adjudication of the appeal. The Applicants also sought a direction to the City Survey Officer No.2, Pune to demarcate of the suit property so that the Corporation is made aware as to the boundaries and it can effectively protect the suit property.

5. Heard Ms. Bagalia, learned counsel appearing for the Applicants and she has invited my attention to various orders as well as photographs placed on record which clearly depict the existence of the encroachment on the suit property.

6. The Corporation has responded to the said Civil Application by filing an Affidavit through the City Engineer of Pune Municipal Corporation. The stand of the Corporation is that it is taking all attempts to remove the encroachments. Reliance is placed on the notice dated 15/05/2019 issued to the Trustees, who run the Dargah, and the notice issued under Section 53 read with Section 152 directing the noticees to remove the unauthorized structure which is admittedly constructed without permission. From 15/05/2019, when there is a failure to remove the said structure, the Corporation has not proceeded and taken the notices to its logical end. The police protection is sought from the police department by addressing

communications on 20/06/2019 and lately on 06/01/2020. It appears that the repeated requests to the concerned Police Officers of Swargate Police Station, Pune, not yielded any results.

7. The Applicants are perfectly justified in seeking the relief by filing the present Application. As far as prayer (b) is concerned, learned counsel for the Corporation, on instructions from Mr. Umesh Shidnik, BI, Zone II, Pune Municipal Corporation, states that the Corporation has no objection if the suit property is demarcated through the City Survey Officer. Hence, the necessary demarcation should be carried out by the City Survey Officer No.2, Pune on the request made by the Corporation within a period of six weeks and the learned counsel makes a statement that the necessary application would be made forthwith. The parties would equally bear the expenses for demarcation.

8. As far as removal of encroachment is concerned, from the Affidavit it is seen that repeatedly, the Deputy Engineer of the Construction Department of the Corporation is seeking police assistance but it appears that the same has not yielded any results. The last request was made in June, 2019 and it is more than eight months, the same is not looked into by the police department. This Court on the earlier occasion has also directed the police authorities to give police protection for undertaking the drive of

removal of encroachment on the suit property. In the present Application also a direction is sought to be issued to the Police Inspector, Swargate Police Station, Pune to act on the application preferred by the Deputy Engineer of Construction Department, Zone-5, Pune Municipal Corporation, dated 06/01/2020. Hence, the police authority is directed to provide police assistance for removal of the encroachment from the suit property as prayed for while taking into account its own workload, within a period of four weeks from the date of receipt of this order.

9. Civil Application No.464 of 2019 is thus allowed in terms of prayer clauses (a) and (b).

10. Civil Application (Stamp) No.28064 of 2018 is taken out by the Applicants praying that the order dated 08/02/2008 passed in Civil Application No.971 of 2006 which was dismissed in default be set aside and Civil Application No.971 of 2006 be restored to the file.

11. In the light of the subsequent Civil Application being filed, learned counsel for the Applicants do not press Civil Application (Stamp) No.28064 of 2018 and, hence, it is dismissed.

[SMT. BHARATI DANGRE, J.]