

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 30756 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2020

Mr. Mohammed Imran Mohammed Ilyas Qureshi ... **Appellant.**

Versus

Municipal Corporation of Greater Bombay ... **Respondent.**

.....

Mr. Sagar Botavia i/b P. S. Mishra for the Appellant/Applicant.

Smt. Madhuri More for the Respondent-MCGM.

.....

CORAM : A. S. GADKARI, J.

DATE : 15th JANUARY, 2020

P. C. :

1. By the present appeal, the appellant has impugned Order dated 5th December 2019 passed in Notice of Motion No.4503 of 2019 in Suit (St.) No.12982 of 2019, dismissing the said Motion.

2. Heard Mr. Botavia, learned counsel for the appellant and Smt. More, learned counsel for the Corporation. Perused the entire record annexed to the Appeal.

3. The appellant has filed a suit for declaration that, the defendants have no right and are not justified to demolish the said suit premises bearing Shop No.2, Mohd. Shafi building, Ground floor, 57, Quresh Nagar, Kurla (E), Mumbai and part and portion thereto without

issuing show cause notice and giving an opportunity of hearing to the plaintiff to represent his case before the defendant and for other consequential reliefs. The said suit is filed on the basis of the notice dated 11th November 2019 issued by the Corporation under Section 488 of the Mumbai Municipal Corporation Act, 1888. It is alleged in the said notice that, the owner/occupier of the said building i.e. Mrs. Kamrunissa Shafi Valli/Sayyad Abbas, situated at Shaffi Mohhomad Chawl, Opp. Badi Masjid, Haji Karamat Ali Road Qureshi, Kurla East, Mumbai has constructed unauthorised construction without having any lawful permission for constructing the same. The appellant has also taken up aforestated Notice of Motion No. 4503 of 2019 for interim relief. As noted earlier, the Trial Court by its Order dated 5th December 2019 has dismissed the said Motion.

4. The learned counsel for the appellant submitted that, the appellant is a tenant in shop No.2 situated on the ground floor of the suit property standing on Survey No. 275 Hissa No.4, Kurla(E). He submitted that, the said structure is in existence prior to 1961 and therefore is a protected structure as per policy of the Corporation. He drew my attention to the assessment bill issued by the Corporation which is annexed at page No.11 of the present Interim Application No. 1 of 2020. He therefore prayed that, the impugned Order may be set aside by allowing the Appeal.

5. A minute perusal of the said document would indicate that

the description of the suit property i.e. Survey No.275, Hissa No. 4 is missing from it. The said document mentions Survey No.857/57. It appears from the record that, the landlord of the suit premises is unsuccessful in earlier rounds of litigation and has put-forth the appellant being tenant of the suit premises by filing the present suit.

6. It is the categorical stand of the Corporation that, without obtaining any permission from the Corporation, the landlord has constructed a seven storied building within ten months.

The appellant herein also failed to point out any permission or authorization to construct the suit premises granted by the Corporation. In the absence of any lawful permission granted by the Corporation to erect or construct the suit premises, the illegality committed by the appellant can not be permitted to remain in force, under the seal of the Court.

7. After perusing the impugned Order, this Court is of the view that, the Trial Court has not committed any error either in law or on facts, while dismissing the Notice of Motion. This Court is of the considered view that, there are no merits in the Appeal, and the same is accordingly dismissed.

8. In view of the dismissal of Appeal, Interim Application Nos.1 of 2019 and 1 of 2020 do not survive and are accordingly dismissed.

(A. S. GADKARI, J.)