

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

**APPEAL FROM ORDER (ST.) NO. 31219 OF 2019
WITH
INTERIM APPLICATION NO. 01 OF 2019**

N.H. Harsora Private Limited & Anr. ... **Appellants**

V/s.

Designated Office,
Assistant Engineer (B.& F.) & Anr. ... **Respondents**

Mr.Rashmin Khandekar a/w. Ms.Dhawani Bokaria i/b. M/s. Purnanand &
Company for Appellants.

Ms.Madhuri More for Respondents-Corporation.

CORAM : A.S. GADKARI, J.

DATE : 8th January 2020.

PC. :

1] By the present appeal under Order 43 of the Code of Civil Procedure, the appellants have impugned Order dated 2nd December 2019, dismissing the Notice of Motion No.2028 of 2019 in L.C. Suit No.1270 of 2019 filed by the appellants.

2] Heard Mr.Khandekar, learned counsel for the appellants and Ms.More, learned counsel for the respondents-Corporation. Perused the entire record produced before this Court.

3] The record indicates that, the respondents-Corporation has issued a notice dated 24th May 2019 to the appellants being owner/occupier/landlord of Hakim Chawl Building, Patte Bapurao Marg, Grant Road East, Mumbai, under Section 354(A) of the Mumbai Municipal Corporation Act (for short, “MMC Act”). It is stated in the said notice that, the concerned authority is satisfied that, the appellant has unlawfully commenced and has unlawfully carried out, the work described in the schedule annexed to the notice in the aforestated premises. In the schedule, it is stated that, there is ongoing unauthorized extension of vertical height above existing first floor admeasuring 29.30m x 11.30m x 2.0m (Average Hight) as shown in red colour in sketch appended to the said notice.

4] The appellant therefore filed the aforestated suit in the City Civil Court Mumbai, for a declaration that, the notice issued under Section 354(A) of the MMC Act dated 24th May 2019, in respect of suit premises as illegal, bad in law, improper, a nullity and is liable to be withdrawn, revoked and cancelled and for other consequential reliefs. The appellant also took out Notice of Motion No.2028 of 2019 in the Suit for temporary injunction restraining the respondents-Corporation from in any manner demolishing, or taking any coercive action pursuant to the said notice issued under Section 354(A) of the MMC Act dated 24th May 2019. As noted earlier, the Trial Court by its impugned Order dated 2nd December 2019 has dismissed the said Notice of Motion.

5] Mr.Khandekar, learned counsel for the appellant submitted that, the Trial Court has not taken into consideration various documents produced by the appellants while dismissing the Notice of Motion. He submitted that, the photographs produced by the respondent-Corporation showing construction being carried out in the suit premises are disputed by the appellants. He submitted that, before issuance of notice under Section 354(A) of the MMC Act, the Corporation did not conduct panchanama and therefore, the notice is bad in law. In support of his contention, he relied upon two decisions of this Court, namely, Sopan Maruti Thopte & Ors. Vs. Pune Municipal Corporation & Ors., reported in MANU/MH/0053/1996 and Sub Vijay International Pvt. Ltd. Vs. Commissioner & Anr., reported in 2007(3) Bom.C.R. 337. He submitted that, in view of the law laid down by this Court, the Authorized Officer of the respondents-Corporation ought to have conducted proper panchanama of the alleged unauthorized construction which has been carried out by the appellants. He further submitted that, there is no authenticity to the photographs produced by the Corporation on record by the Trial Court. He further submitted that, in furtherance of 'No Objection Certificate' dated 26th March 2010 issued by the Mumbai Building Repairs and Reconstruction Board (a MHADA Unit), the appellants are carrying out repair work in the suit building and certainly not unauthorized construction and/or illegal construction in it. He therefore prayed that, the impugned Order may be set-

aside by allowing the present appeal.

6] Per contra, learned counsel appearing for the respondents-Corporation vehemently opposed the appeal and produced on record the colored photographs of the suit structure. She submitted that, there is no permission granted by the Corporation to the appellants to carry out construction work as mentioned in the notice. She submitted that, from the photographs on record, it is clearly visible that, the appellants are carrying out unauthorized construction in the suit premises. She therefore submitted that, the appeal may be dismissed summarily.

7] Section 354(A) of the MMC Act empowers the Commissioner of Corporation to issue written notice and require a person erecting unlawful structure or executing such work to stop such erection of work forthwith. The impugned notice dated 24th May 2019 is issued by the Competent Authority established under Section 354(A) of the MMC Act.

It is to be noted here that, in the notice dated 24th May 2019 issued by the respondents-Corporation, it has been categorically stated that, the appellant is carrying out unauthorized extension of vertical height above existing first floor measuring 29.30m x 11.30m x 2.0m (Avg.ht.), a sketch thereof is appended to the said notice. The colored photographs produced by the learned counsel for the respondents clearly indicate that, the original building is a structure of ground plus one storey. That under the garb of 'No

Objection Certificate' granted by the Mumbai Building Repairs and Reconstruction Board (MHADA) dated 26th March 2010, it appears that, the appellant is carrying out unauthorized vertical construction in the suit property. It further appears that, to conceal the said illegal activity, the appellant has put tarpaulin on the top of it. The photographs further clearly indicate that, the appellants have erected beams and columns below the said tarpaulin with a view to carryout vertical construction on the first floor. It is thus apparent that, the appellants are carrying out illegal and unauthorized construction in the suit property as has been specifically mentioned in the suit notice.

8] During the course of arguments, this Court repeatedly asked the learned counsel for the appellants to produce or point out permission granted to the appellants by the Corporation or any other Competent Authority to carry out vertical construction. Though he pointed out various other documents to this Court for drawing an inference that, the said construction is legal, the learned counsel was not able to point out the basic document i.e. the official permission granted by the Corporation to the appellants to carryout the said construction activity. It is well settled position of law that, for carrying out any construction activity, permission from the Planning Authority or Competent Authority is mandatory and in the absence of such a permission, no person can be permitted to carryout construction. The record further indicates that, the concerned Officer of the Corporation after visiting the suit premises and after

taking photographs of the same has issued the impugned notice dated 24th May 2019. It further clearly appears that, the guidelines issued by the Division Bench of this Court in the case of *Sopan Maruti Thoppte (supra)* are complied with by the Corporation.

As far as the photographs produced on record by the learned counsel for the respondents-Corporation are concerned, at this stage, there is no reason to disbelieve the authenticity of the same. Because, the said photographs are taken by a public servant in due course of his duty and it is not the case of the appellants that the concerned public servant is having any *malafide* intention or animosity against them. The unauthorized or illegal construction being carried out by the appellants cannot be permitted to continue under the seal of the Court.

9] For want of basic document i.e. the permission to the appellants for effecting extension of vertical height above existing first floor of the suit building, it cannot be held that, the notice issued by the Corporation is bad in law. The appellants have no *prima-facie* case in its favour. Balance of convenience does not lie in favour of the appellants. No irreparable loss or harm would be caused to the appellants, if injunction is not granted in their favour.

As noted earlier, in the absence of any lawful permission to carryout construction activity, the appellant cannot be permitted to continue

with the same under the Orders of the Court.

10] After perusing the entire record, this Court is of the considered view that, there are no merits in the appeal.

Appeal is accordingly dismissed.

11] In view of dismissal of Appeal, the Interim Application does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]