

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

**APPEAL FROM ORDER NO. 567 OF 2019
WITH
CIVIL APPLICATION NO. 644 OF 2019**

Stany Silvestor Menezes	...	Appellant (Org. Plaintiff)
V/s.		
Municipal Corporation of Greater Mumbai & Anr.	...	Respondents (Org. Defendants)

Mr. J. K. Tiwari for Appellant.
Ms. Madhuri More for the Respondent No. 1-Corporation.
Mr. Ruchir L. Tolat i/b. M/s. L. C. Tolat & Co. for Respondent No.2.

CORAM : A. S. GADKARI, J.

DATE : 12th February 2020.

PC. :

1] By the present Appeal under Order 43 of Civil Procedure Code, 1908, the appellant/Original plaintiff has impugned Order dated 25th October 2018 passed in Notice of Motion No. 611 of 2014 in L.C. Suit No. 436 of 2014 by the learned Judge, City Civil Court, Greater Mumbai, dismissing the said Notice of Motion.

2] Heard Mr. Tiwari, learned counsel for the appellant, Ms. More, learned counsel for the respondent No.1-Corporation and Mr. Tolat, learned counsel for the respondent No. 2. Perused the entire record annexed to the

compilation of Appeal.

3] The record reveals that, the respondent No.1-Corporation had issued Notice dated 2nd December 2009 under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short “M.M.C. Act”) to the appellant pertaining to the unauthorized construction carried out by him and as has been more particularly mentioned in the schedule of the said notice. The schedule annexed to the said notice reads as, “*unauthorised construction of structure with brick masonry, G. I. Sheet & A.C. Sheet roofing ad-measuring 9.7m x 6.2m & 10.7m x 4.7m and height (5.18m + 4.57m)/2*”. The sketch of the said unauthorized structure is also appended to the said notice.

After receipt of the said notice, the appellant replied it by his reply dated 10th December 2009. The Designated Officer of the respondent No.1-Corporation by its Final Order dated 29th January 2014 held that, the suit structure is unauthorized structure and there are no documents to show the existence of the suit structure prior to the datum line of 1st April 1962. The Designated Officer accordingly rejected representation of the appellant and passed the said Final Order dated 29th January 2014.

The appellant therefore filed the aforesaid L. C. Suit No. 436 of 2014 in the City Civil Court at Mumbai, for declaration that, the notice issued under the provisions of Section 351 of M.M.C. Act dated 2nd December 2009 and the Final Order passed thereon dated 29th January 2014 are bad in

law, illegal and the Respondent No.1/Defendant No.1 has no right to take action of demolition in respect of the appellant's premises situated at Gavanipada, P. K. Road, Mulund (West), Mumbai – 400 080, in any manner whatsoever and for injunction against the respondent No.1-Corporation from demolishing the suit structure.

The appellant also filed aforesaid Notice of Motion No. 611 of 2014 for interim relief therein. As noted earlier, the Trial Court by its impugned Order dated 25th October 2018 has dismissed the said Notice of Motion.

4] Mr. Tiwari, learned counsel appearing for the appellant submitted that, the Competent Authority constituted under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 has issued photo passes to the appellant with respect to the suit premises. He submitted that, the suit structure is an 'assessed structure' and the appellant is beneficiary of the said structure which is in the 'slum area' and will be entitled for the benefit arising out of it. He submitted that, there are voluminous documents available on record to establish that, the suit structure is in existence from 1st April 1962. He submitted that, though the Trial Court has adverted to the said fact, however ultimately has rejected the Notice of Motion filed by the appellant. He submitted that, during the pendency of the suit filed by the appellant, the suit structure may be protected by setting aside the impugned Order and allowing the Notice of Motion filed by the appellant.

5] Learned counsel appearing for the respondent No.1-Corporation submitted that, as per the record, there is no permission at all granted by the Corporation to the appellant to construct the suit structure, which is more particularly mentioned in the schedule annexed to the said Notice dated 2nd December 2009. She submitted that, the suit structure is a wholly unauthorized structure and therefore, the Trial Court has rightly rejected the Notice of Motion filed by the appellant for interim relief.

Learned counsel appearing for respondent no.2 in addition to the arguments advanced by learned counsel for the respondent No.1 vehemently opposed the Appeal and submitted that, the present Appeal has no merits and may be dismissed summarily.

6] It is to be noted here that, though there are some documents available on record to infer the fact that, the suit structure is in existence after 1st April 1996 and the same has been assessed in the name of the appellant, the basic fact remains that, there is no permission granted by the respondent No.1-Corporation or by any other Competent Authority established under the law, to the appellant to construct/erect the same. Likewise, there is also no legal approval granted by respondent No.1-Corporation or any other Competent Authority to construct/erect the suit structure. There is no document available on record even to remotely infer that, the suit structure is standing thereon prior to the datum line of 1st April 1962.

For want of basic document, i.e. approved plan or permission granted by the Corporation or any other Competent Authority in that behalf, it cannot even remotely be inferred that, the suit structure is an authorized structure and it cannot be permitted to remain in existence only under the Orders of Court. I find substance in the submissions made by the learned counsel for the respondent No.1-Corporation that, the suit structure is wholly unauthorized structure.

7] As far as the submission of the learned counsel for the appellant that, the suit structure is an 'assessed structure' and the Competent Authority established under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 has issued photo passes to the appellant, in that behalf is concerned, it has to be noted here that, merely because the suit structure is assessed for collection of taxes and/or for revenue purpose, it *ipso-facto* does not make it legal. Assessment of a structure and collection of taxes is only for the purpose of collection of revenue by the concerned Authority. As far as issuance of photo passes by the Slum Authority is concerned, if the suit structure falls in 'slum area' declared by the concerned Competent Authority established under the said Act, the applicant will get benefit of the scheme of the Government as may be permissible under the law. However, merely because of the fact that, photo pass is issued by the Competent Authority in favour of the Appellant, itself will not make an illegal

and unauthorized structure automatically legal and authorized. Collection of revenue and taxes by the Corporation and issuance of photo passes by the Competent Authority are totally different aspects than having the suit structure authorized and legal.

In view of the above, I find no merits in the Appeal and is accordingly dismissed summarily.

8] In view of dismissal of Appeal, the Civil Application No.644 of 2019 pending therein does not survive and is accordingly disposed off.

9] At this stage, learned counsel for the appellant submitted that, the appellant intends to challenge the present Order before the Hon'ble Supreme Court and therefore, the Order of ad-interim relief dated 26th November 2018 granted by this Court may be continued for a period of six weeks from today. Learned counsel for the respondents opposed the said prayer.

However, at the request of learned counsel for the appellant, the ad-interim relief granted by Order dated 26th November 2018 to remain in operation for a period of six weeks from today.

[A. S. GADKARI, J.]