

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.179 OF 2022
WITH
INTERIM APPLICATION NO.1197 OF 2022

Rajkumar Punnuswami Nadar .. Appellant

Versus

The Municipal Corporation of .. Respondent
Gr.Mumbai

...

Mr.J.S.Kini with Ms.Shweta K. Jain i/b Ms.Sapna S.
Krishnappa for the Appellant.

Mr.Om Suryavanshi for the Respondent/MCGM.

Mr.Sanket Jadhav, Sub-Engineer (B & F) Dept., P/North Ward
present.

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CORAM: BHARATI DANGRE, J.

DATED : 08th APRIL, 2022

P.C:-

1. The appeal is filed, being aggrieved by the order passed by the City Civil Court at Dindoshi on 02/02/2022, refusing ad-interim relief in favour of the appellant/plaintiff i.e. a restraint order against the MCGM from demolishing the suit structure till the decision of the Notice of Motion.

2. The plaintiff, who is a occupant of shop premises 4' X 8' styled as 'Raja Pan Bidi Shop' situated at Datta Mandir Co-

Operative Housing Society Ltd., Sahakar Building, Near Sangeeta Talkies, Datt Mandir Road, Malad (E), Mumbai, took out the draft Notice of Motion, in which he sought the following reliefs :-

(a) Pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendant Corporation from demolishing or permitting demolition of the suit premises a shop premises admeasuring 4 feet x 8 feet i.e. Raja Paan-Bidi Shop, Datt Mandir CHS Ltd., Sahakar Bldg., Near Sangeeta Talkies, 195, Datta Mandir Road, Malad (E), Mumbai 400097, without complying with the directions of the Hon'ble High Court in W.P.No.1135 of 2014 of recording the list of occupants, and the areas in their possession, more particularly of the Plaintiff in the suit building.

(b) Pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendant Corporation from issuing Commencement Certificate for redevelopment without they submitting the written agreement with the Plaintiff herein, in compliance with Order of the Division Bench of Bombay High Court, in W.P.Ld No.1135 of 2014.”

3. The plaintiff pleaded in the plaint that the declaration is essential in the wake of the threat given by the defendants to demolish the suit property and, since, he apprehends forcible demolition of the suit property without following due process of law at the stance of the society/developer-builder, he approached the Court.

4. The impugned order records that a notice was issued, on 06/07/2015 under Section 354 of the MMC Act and action was initiated as the building was in dilapidated condition. The learned Judge attributed knowledge to the plaintiff and recorded that despite this, he is coming with the case that due process of law is not followed. Recording that the Corporation has initiated action against the 'Sahakar Building' under Section 354 and the suit property is situated in the said building, the ad-interim relief is refused.

5. On the last occasion, I had asked the learned counsel for the Corporation to verify whether the plaintiff's structure is identified as a structure located in the building and since it is contemplated that before the structure can be pulled out, the Corporation shall ask the owner to submit the statement declaring the occupants and the area in their occupation as well as the location of their premises and their status.

6. The learned counsel for the Corporation, today, makes a statement that the name of the plaintiff is not included in the Area Information Statement. Alongwith the said statement, he has also enclosed photographs clicked from different angles of the plaintiff's shop and it is apparent that the shop is outside the building known as 'Sahakar Building'.

The learned counsel for the Corporation does not dispute the fact and makes a categorical statement that the structure of the plaintiff is not part of the 'Sahakar Building' and it abuts the wall of the building. Necessarily, the structure is not

included in the Area Information Statement and, therefore, his possession need not be disturbed on the ground of issuance of notice under Section 354.

7. Now, the learned counsel for the Corporation makes a statement that since the structure of the plaintiff is not included in the 'Sahakar Building', but it remains to be unauthorised structure, they have issued a notice under Section 55 of the MRTP Act, asking the owner/occupier of 'Raja Pan Bidi Shop' to remove the unauthorised development within 15 days from the receipt of the notice.

From the notice, which is handed over to me and taken on record and marked 'X' for identification, there is a noting to the effect that 'pasted on site on 10/03/2022'. This leads to a presumption that, notice is actually issued to the owner.

In any case, the respondent/Corporation is at liberty to take steps against the plaintiff as regards his structure, by following the due process of law and it is open for the respondent, to take any action, which it is entitled to take under law, with an only hindrance that they shall adhere to the statutory provisions before initiating any action. This aspect shall be brought to the notice of the City Civil Court at Dindoshi, since the Court was informed that the structure of the plaintiff is also covered by notice under Section 354.

8. In the wake of the above, upon the Corporation filing an appropriate affidavit and bringing this order to the notice of the City Civil Court, the learned Judge shall decide the Notice

of Motion. Till then, no coercive action under Section 354 shall be taken against the plaintiff.

With the aforesaid, the appeal from order stands disposed off alongwith it's pending application.

(SMT. BHARATI DANGRE, J.)