

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14024 OF 2022

Shivnath Mohan Yadav

.. Petitioner

Versus

The Municipal Corporation of Greater Mumbai
& Anr.

.. Respondents

.....

- Mr. Dinesh C. Shah for Petitioner
- Mr. Om Suryawanshi for Respondent No. 1
- Mr. Pradeep J. Thorat a/w Ms. Aditi Naikare and Ms. Sarika Ranjane for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 23, 2022

P.C.:

1. Heard Mr. Shah, learned Advocate for Petitioner; Mr. Suryawanshi, learned Advocate for Respondent No. 1 and Mr. Thorat, learned Advocate for Respondent No. 2.

2. Perused the impugned order dated 29.01.2021 passed by the learned Trial Court in Chamber Summons No. 673 of 2014. It is an admitted position that Respondent No. 2 is the owner of the suit property on which the structure occupied by Petitioner stands. Respondent No. 1 has issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1988 (for short “**the Act**”) on the complaint being lodged by Respondent No. 2 in respect of unauthorized construction carried out in the suit structure.

3. The position that Respondent No. 2 is the owner of the suit property is not disputed as he has purchased the suit property standing on CTS No. 498(pt) admeasuring 1102.69 sq. mtrs. on 01.12.2010. Petitioner's case before the learned Trial Court was that the alleged encroachment / unauthorized construction was in respect of the structure which was not standing on the portion of CTS No. 498(pt) 1102.69 sq. mtrs. purchased by Respondent No. 2. Save and except this submission, there was no documentary evidence produced by Petitioner before the learned Trial Court except the photograph of his car having been parked in front of the suit structure on the basis of which Petitioner claimed that the structure is not on the property belonging to Respondent No. 2. In that view of the matter, Petitioner resisted the impleadment Application of Respondent No.2 before the learned Trial Court.

4. Another grievance raised by the Petitioner before the learned Trial Court was that he had entered into an agreement for sale in respect of the portion of the suit land and the structure standing thereon with one A. G. Sonawala, however the said transaction did not fructify.

5. From the above facts, the admitted position is that Respondent No. 2 is the owner of the land on which the suit structure is standing. That apart, the impugned 351 notice was addressed by

Corporation to both the Petitioner and Respondent No. 2. It is seen that Petitioner has not disputed the ownership of Respondent No. 2 of CTS No. 498(pt) admeasuring 1102.69 sq. mtrs. Trial Court has observed that Petitioner's extent of encroachment is extended in the open land of Respondent No. 2. Hence, rights of Respondent No. 2 are directly affected.

6. Mr. Shah, learned Advocate for Petitioner contended that Respondent No. 2 did not have any right, title and interest in the suit structure as well as the land beneath the suit structure. However, the record speaks to the contrary. Mr. Shah has referred to and relied upon a decision of the Supreme Court in the case of **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay & Ors.**¹ and contended that the facts of the said case are identical to the facts in the present case and the Supreme Court has held that in a dispute / litigation wherein the notice under Section 351 of the Act is under challenge for the purpose of deciding legality and validity of the impugned notice in the suit on merits, the presence of the owner would not be necessary.

7. Perusal of the above decision reveals that in that case, the intervenors namely Respondent Nos. 2 and 3 had a specific interest in the suit house though they were not residing in the said house. They claimed to have had an ownership right in the suit house and a

¹ 2017(6) ALL M4 420 (SC)

separate suit in respect of the dispute for entitlement was also pending between the same parties. Such are not the facts in the present case. Admittedly, in the present case, the land below the structure belongs to Respondent No. 2 as he is the owner of the said land and the impugned notice is also duly issued by Respondent No. 1 to Respondent No. 2. The facts in the case cited by Mr. Shah are therefore distinguishable.

8. That apart, the learned Trial Court has given appropriate cogent reasons and findings in paragraph Nos. 9 and 10 of the order dated 29.01.2021 in arriving at its decision for allowing impleadment of Respondent No. 2 as a proper and necessary party in accordance with law. Hence, I find no reason to interfere with the impugned order and the same is sustained.

9. In view of the above, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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