

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 383 / 2021
Alongwith
Interim Application No. 3183 / 2021
in
Appeal from Order No. 383 / 2021

Saheb Singh Shingara Singh Sandhu

... Appellant

Versus

Municipal Corporation of Greater
Mumbai and another

... Respondents

Mr. G.S. Godbole a/w Mr. Surya Das i/by R.R. Sharma, Advocate for the
Appellant/Applicant.

Mr. Dharmesh Vyas, Advocate for MCGM.

CORAM : SANDEEP K. SHINDE, J.

RESERVED ON : 15th FEBRUARY, 2022.

PRONOUNCED ON : 18th FEBRUARY, 2022.

P.C.

Heard. Mr. Godbole, learned Counsel for the Appellant and Mr.
Vyas, learned Counsel for the Corporation.

1. This appeal under Order-43 Rule-1(r) read with Section 104 of the

Civil Procedure Code, challenges the order dated 18th March, 2021 passed in Notice of Motion No. 236/2021 in L.C. Suit No. 195/2021, by which the learned Judge declined to stay the implementation and execution of Show Cause Notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act' for short).

2. Facts in brief are that the MCGM vide Notice dated 29th January, 2020 under Section 351 of the MMC Act, called upon the Appellant-Plaintiff, to show cause within the stipulated period, as to why, the suit building or construction, should not be removed or pull down. Suit construction described in Notice reads as under;

"SCHEDULE : Unauthorised construction of G + 1 structure adm. 25 M x 29.6 M x 6.80 M with the help of reinforced connect concrete Slab Roof and flooring supported with B.M. Wall and Channel Section and on open space and used as guest (43 Rooms and 1 Hall) house, without permission from Competent Authority."

3. Appellant replied the notice and principally relied on and placed two documents among others, that is Repair Permission dated 27th

April, 1984 and City Survey Map for consideration of the Designated Officer to show that the suit construction was existing prior to detum line. Ignoring these two documents, Designated Officer by speaking order dated 18th January, 2021, concluded that notice structure was erected without permission and noticee could not produced any document to show that he has applied for regularization, nor he could established suit structure was erected before 1st April, 1962.

4. Plaintiff, thus instituted the suit and lodged the legality of the notice issued under Section 351 of the MMC Act and Speaking Order dated 18th January, 2021 passed by the Designated Officer. Pending suit, the learned Judge declined to stay the operation and execution of the impugned notice and order. Thus, this appeal.

5. Question falls for consideration is, whether Appellant-Plaintiff, has prima-facie established that suit structure was erected prior to 1st April, 1962 AND whether impugned order calls for interference?

6. Mr. Godbole, learned Senior Counsel for the Appellant relied on the following documents, obtained under Right to Information Act, to contend that the suit structure standing on CTS No. 1500, new CTS No. 1483 C was in existence prior to 1st April, 1962.

[i] First document is CTS plan issued by the City Survey Officer, Mumbai-54;

[ii] A letter dated 29th September, 1980 addressed to the Appellant by the Office of Controller of Slum, Bombay, Old Custom House, Fort.

[iii] Repair permission no. 70 dated 27th April, 1984 granted by the Municipal Corporation of Greater Mumbai.

[iv] Particulars relating to Tax Revision Assessment in respect of suit construction, consisting of ground + one floor.

7. It may be stated that aforesaid documents were neither considered by the Designated Officer, nor the learned Judge appreciated the purport and significance of these documents to ascertain whether suit construction was in existing prior to 1st April,

1962. Herein, notice under Section 351 was issued on 29th January, 2020 to which reply was filed on 4th February, 2020 and Speaking Order was passed by the Designated Officer on 18th January, 2021. Before passing the Speaking Order, on 4th March, 2020, CTS plan submitted by the Plaintiff was sought to be verified by the Officer of Corporation from the City Survey Office, to which City Survey Officer responded and confirmed that it was the same plan supplied to the Plaintiff under the Right to Information Act alongwith a covering letter dated 24th October, 2018. Therefore, the CTS map is a official map and it carries a presumption of correctness. Now, question is, whether this map shows the suit construction, was erected prior to 1st April, 1962. The covering letter dated 24th October, 2018 addressed to the Plaintiff by the City Survey Officer alongwith CTS map, speaks briefly about survey of CTS No. 1483 C (then 1500) being conducted between 24th May, 1961 to 27th May, 1962. The CTS map produced for consideration shows that it was drawn upon conducting survey and it admits that suit structure ground + one existing on CTS No. 1483 C

(then 1500) prior to 1st April, 1962. Be it noted that neither contents of covering letter dated 24th October, 2018, nor correctness of CTS map has been disputed or questioned by the Corporation. Next document relied on by the Appellant is the Repair Permission No. 70 dated 27th April, 1984, by which, Appellant was permitted to carry out the repairs, shown in the sketch, accompanying the permission of the following nature.

- (i) Repairs and replaster existing B.M. walls of ground and mazzanine floor;
- (ii) Replace damaged flooring of ground floor and mazzanine floor;
- (iii) Replace corrugated rolling shutters;
- (iv) Replace corrugated damaged iron ladder;
- (v) Replace broken A.C. sheets of the roof;
- (vi) Replace corrugated iron members of mazzanine floor wherever required.

. Although, the Repair Permission granted in 1984, may not establish existence of suit structure prior to detum line, however it is

not Corporation case that Plaintiff constructed the suit structure after the detum line. The next document relied on is a letter dated 29th September, 1980 addressed by the Office of Controller of Slum, Bombay to the Appellant. Primary evaluation of this document, implies that the suit structure was censused structure on Private Slum on 14th August, 1976 and the area stated in the Census record is 4845 Sq.ft. and mazzinine floor area is 4845 Sq.ft. As yet, one more document relied on by the Appellant is note sheet depicting the particulars and calculation of revised tax to which, the suit construction was subjected to from 1st September, 2009. This document (Form No. 13 at page 80-83 of additional compilation) conveys that ground floor of lodging house i.e. suit building and Room Nos. 101 to 122 were assessed to property taxes as per the area. As well the Room Nos. 124 to 134 and passage on the first floor were assessed to tax as per measurement report no. -ME/03/09-0. It is therefore to be held that the Municipal Authorities while revising the taxes had carried out the measurements of the suit building and

submitted report to tax assessor in the year 2009. Yet, the measurement report has not been produced by the Municipal Corporation for its consideration.

8. Thus, primary evaluation of documents like CTS map, that was drawn after conducting the survey between May, 1961 to May, 1962; contents of covering letter dated 24th October, 2018; reply/response dated 13th October, 2020 by City Survey Officer confirming that CTS map was drawn after conducting the survey of CTS No. 1483 C (then 1500) cumulatively leads me to infer and hold that suit structure was in existence prior to 1st April, 1962. Although, other documents relied on by the Appellant, were not indicating or establishing the existence of the suit structure prior to datum line, nevertheless apparently these documents corroborates CTS map and survey conducted by the CTS Officer, in which the suit structure was found existing on the CTS then 1500. Additionally, Corporation's own documents show that in 1980 permission was granted to repair ground and first floor of structure.

Thus, overview of documents referred to hereinabove have prima facie established that the suit structure was erected prior to 1st April, 1962. The question is answered accordingly.

9. The learned Judge by impugned order declined to protect the suit structure principally on the ground that Plaintiff had not filed any document to show his ownership in respect of the suit premises. Besides, the learned Judge relied on the deposition in previous suit, without disclosing its relevancy. In Paragraph No.7, the learned Judge held that tika sheet no. 55 shows there were two structures on CTS 1500 and the surrounding area was the open space. Thereafter in Paragraph No.8, the learned Judge discussed the Repair Permission and may be through over side, recorded the finding that the Repair Permission does not disclose the existence of first floor at CTS 1503. This finding is contrary to Repair Permission dated 27th April, 1984 and the sketch appended thereto. The sketch (at page no. 89-90 to additional compilation) shows the suit building was consisting of

ground + mazzanine floor. Thus, in my view, the learned trial Court failed to appreciate the purport and significance of the documents relied on by the Appellant in right perspective, which cumulatively or otherwise prima facie established the existence of the suit structure prior to 1st April, 1962.

10. For all that reasons, the impugned order is set aside. Appeal is allowed. Pending suit, the implementation and execution of the notice dated 29th January, 2020 issued under Section 351 of the MMC Act and the order dated 18th January, 2021 passed by the Designated Officer is stayed.

11. The trial in L.C. Suit No. 195/2021, is expedited.

(SANDEEP K. SHINDE, J.)

Digitally signed
by
MOHAMMAD NAJEEB
MOHAMMAD QAYYUM
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