

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.484 OF 2022
WITH
INTERIM APPLICATION NO. 3091 OF 2022

Poonam Shantosh Dherange .. Appellant

Versus

Executive Engineer and Designated .. Respondent
Officer N-ward Office

...

Mr.Vishal Kanade with Mr.Shailesh Shukla for the Appellant.

Mr.Santosh Parad for the Respondent/MCGM.

CORAM: BHARATI DANGRE, J.
DATED : 5th MAY 2022

P.C:-

1. The present appeal is filed, being aggrieved by the order passed by the City Civil Court on 26/04/2022, refusing the ad-interim relief on the draft Notice of Motion.

2. The appellant/plaintiff was served with a notice under Section 351 of the M.M.Act, in respect of the structure described in the schedule, as unauthorised vertical extension with the help of brick masonry wall and AC sheet roof

admeasuring 8.50 m X 3.50 m having ht. Of 2.80 m., indicated by the red colour in the sketch.

Pursuant to the said notice dated 31/03/2022, the plaintiff responded to the Executive Engineer and the Designated Officer, 'N' Ward, denying any unauthorised construction and specifically took a stand in reply to the notice that the plaintiff is in use, occupation and possession of the suit premises and her deceased husband was tenant. She specifically stated that some tenable repairs were carried out and for this a notice came to be issued under section 351 of the MMC Act.

Another objection raised is, the suit premises falls within the slum area in respect of which a declaration has been issued by the Competent Authority under the Slum Act and, therefore, the notice was requested to be recalled. Apart from this, in order to establish the factum of construction being very old, the documents like ration card, electricity bill, survey receipt, rent receipt etc were produced. All the documents which were produced before the Authority were acknowledged.

3 On 13/04/2022 a speaking order came to be passed to the following effect :

“This office has issued the above referred notice under Section 351 of MMC Act 1888 for unauthorized vertical extension with the help of brick masonry wall & AC sheet roof admg 8.50 m X 3.50 m having ht 2.80m to owner/ occupier Smt. Poonam Dherange, Room no-10, Bhatt chawl No-2. Bhattwadi, Ghatkopar west, Mumbai-400 084.

In response to the same you have neither submitted any authentic document, evidence to prove the authorization of the notice structure nor submitted the plans approved by Executive Engineer (Building Proposal)-ES or prior to the datum line prescribed by the MCGM for tolerating structure i.e. 01.04.1962 for commercial structure & 17.04.64 for residential structure.

I have therefore come to the conclusion that the notice work is unauthorized. I therefore pass the following order:

ORDER

You are hereby directed to remove / demolish the notice structure immediately failing which the said unauthorized structure will be demolished by MCGM at your risk and cost, consequences & further necessary action as per MMC Act will be initiated against you without any further intimation which may please be noted.”

4. The above order clearly indicate that the stand of the plaintiff in reply to the notice is not at all considered, but perfunctorily, the order states that the plaintiff has failed to produce any documents to establish the authorisation of the notice structure prior to the datum line. The stand of the plaintiff about the tenable repairs being carried out and the area being declared as slum, is not at all touched.

5. It is pertinent to note that when the Corporation issues the show-cause notice, it is expected from the noticee to

respond to the same and to show cause, as to why effect should not be given to the said notice. When such response is filed, it is expected on part of the officials of the Corporation to consider the stand taken by the noticee and to deliberate upon the same, and upon it's consideration, it is open for the Corporation to reject the said stand, but it must be necessarily reflected in the speaking order. The issuance of show-cause notice and calling reply is not an empty formality, but the said procedure is in tune with the adherence to the natural justice to the effect that before taking any adverse action against the noticee, he should be given adequate opportunity to defend himself and when such a defence is set up, it is imperative for the Corporation to take it into consideration, though it may not find substance in the same, and necessarily uphold it's own show-cause notice, resulting in the structure being demolished or directed to be demolished. In absence of such an exercise, it cannot be said that the Corporation has acted with fairness.

6. In the wake of the above, the speaking order which is passed without reflecting the reasons set out in response to the show-cause notice, deserves to be set aside. The Appeal is, accordingly allowed.

The Corporation is directed to pass a fresh speaking order within a period of four weeks from today, upon taking into consideration the response submitted by the noticee.

Since the speaking order itself is set aside, with liberty to the Corporation to pass a fresh speaking order, the City Civil Court shall disposed of L.C.Suit No.1004 of 2022, with liberty being reserved to challenge the fresh speaking order, when passed.

Needless to state that, till this event occur, the Corporation shall not give effect to the notice issued by it.

7. In view of the disposal of the appeal, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)