IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.93 OF 2021
WITH
INTERIM APPLICATION NO.931 OF 2021

M/s. S.K. Constructions Co. ...Appellants
Vs
The Municipal Commissioner ...Respondent
...

Mr. Karl F. Tamboly with Mr. Nitin G. Raut with Mrs. G.P.Vas i/by Vas and Co. for the Appellants.

Mr. G.S.Godbole, Senior Counsel i/by Mr. Sumit Kothari with Ms. Shivani Samel for Respondent No.4.

Mr. Dharmesh Vyas with Mr. Ravindra Sirsikar for MCGM.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : APRIL 11, 2022.
PRONOUNCED ON: APRIL 21, 2022.

P.C. :

Pending suit instituted by the appellants, learned trial Court vide order dated 12th November, 2020, declined to restrain the Corporation, from taking coercive steps concerning Suit Structure, in pursuance of the notice dated 11th March, 2020 issued under Section 354A of the Mumbai Municipal Corporation Act, 1888. That order is challenged in this Appeal From Order under Order 43 Rule 1(r) read with 104 of the Code of Civil Procedure, 1908.

2 Heard learned counsel appearing for the respective parties.

3 Question that falls for consideration is, whether notice structure qualifies for protection, as per Municipal Policy of protecting the structures, which were constructed prior to datum line, i.e., 1st April, 1962.

Briefly stated facts of the case are like this;

4 In 1979, appellants, M/s. S.K. Constructions, a partnership firm purchased the property bearing CTS Nos.2583 to 2596, admeasuring 783 sq.mtrs. with structures standing thereon. First Structure was abutting Nehru Road. It was a ground plus one upper floor. Ground floor, was housing six shops, occupied by tenants. Second Structure was behind the 1st structure. It was a chawl. Yet, both the structures were known as 'S.K.House' and assessed to

property tax, since 31st March, 1961. It is evident from Property Tax Bill. The tenants in shops, on the ground floor, in the building abutting Nehru Road i.e. 'First Structure', had filed RAD Suit No.278 of 2003 against the land-lords, i.e., partners of S.K. Constructions Company, seeking decree to restrain them from demolishing their tenanted shops. Tenants' case, was that the land-lords (S.K.Constructions) had agreed to sell land CTS 2583-2596 with building/structures, thereon to M/s. Romell Real Estate Private Limited (Defendant No.3 therein and respondent no.4 in this appeal). Thus, tenants pleaded, as per understanding between land-lords and prospective purchasers, upper floor of the S.K.House (above shops) was demolished. However, while demolishing the upper floor, cracks were developed on the walls and ceiling of the shops in possession of the tenants. In paragraph 7 of the plaint, tenants pleaded that that "there were two buildings at CTS Nos.2583 and 2596 at Nehru Road, Vakola, Santacruz (East), Mumbai. One building is at Nehru Road commonly known as S.K.House and one chawl behind the said building, both commonly known as S.K.House. <u>Chawl at the rear side of the building was demolished by the defendants as such building</u>

S.K.House on the Nehru Road was in existence. *(emphasis supplied)* Yet, another suit was filed by the tenants, being Long Cause Suit No.2502 of 2003 against the partners of S.K.Constructions Company, being land-lords and respondent no.4 herein, i.e., M/s. Romell Real Estate Private Limited, being prospective purchasers. It was instituted in the City Civil Court, Bombay, by which the tenants were seeking a mandatory injunction directing the Municipal Corporation to disclose, as to whether they had sanctioned demolition of, tenanted shops. In Paragraph 8 of the plaint, tenants pleaded that *"Plaintiffs state that there were two buildings on plot of land bearing Survey No.65, Hissa No.48, CTS Nos.2583 and 2596 situated at Nehru Road, Santacruz (East); one building is at Nehru Road and one chawl behind the said building on Plot No.79, both commonly known as S.K.House. Chawl at the rear side of the building was demolished by the defendants." (emphasis supplied).* In the Suit No.278 of 2009, Court Commissioner was appointed with the directions to visit the Suit shop Premises, and submit a report. Accordingly, Court Commissioner, submitted report, in 2007 along with rough sketch/plan. Rough sketch shows, existence of six shops; however, no construction or chawl was shown behind the suit shops. Yet, another Court Commissioner's report submitted on 23rd June, 2011 along with map, (at Page 173 of the paper-book) shows that structure on the rear side of the suit shops were already demolished. In precise words Commissioner reported that *"The structure touching to the rear side of the Suit Premises bearing CTS Nos.2584 to 2589 marked in green colour, were demolished."*

5 On 31st July, 2007, partners of M/s. S.K. Constructions Company, executed registered development agreement in favour of M/s. Romell Properties Private Limited, Respondent No.4 herein, in respect of property bearing CTS Nos. 2583 to 2596. Whereafter, on 14th December, 2007, the Municipal Corporation issued Intimation of Dis-approval (IOD) in favour of Respondent No.4 for developing the land bearing CTS Nos.2583 to 2596 at Santacruz (East). Documentary evidence on record shows, that at the instance of M/s. Romell Real Estate Private Limited, the land bearing CTS Nos.2583 to 2596 was measured by the City Survey Officer, Tehsil: Andheri, District: Mumbai Suburban on 30th September, 2008. A measurement map is

at Page 149 of the paper-book. Surveyor delineated in sketch, two structures on CTS Nos.2583 to 2596; out of which one structure abutting Nehru Road was found existing; however, a chawl behind the said structure was demolished.

6 Thus, from the averments in the plaints; reports of the Court Commissioner and a map drawn by the City Survey Officer on 30th September, 2008, imply that the chawl, at the rear side of the First Structure, was demolished before 2003. Next, reason for recording this prima-facie, finding is that the land-lords, M/s. S.K.Constructions in both the suits did not deny averments in the plaint, relating to demolition of chawl nor challenged reports of the Court Commissioner nor challenged the report/map drawn by the City Survey Officer.

7 In the back-drop of the aforesaid facts, when Corporation had noticed that, appellants-noticee, were erecting structure on the rear side of the First Structure, notice was issued on 11th March, 2020 under Section 354A of the Mumbai Municipal Corporation Act,

calling upon the appellants/noticee, to stop the execution of the work of unauthorised construction. Designated Officer of the Corporation, after hearing the plaintiffs, held that the construction commenced on CTS Nos.2583 to 2596 was unauthorised and directed its demolition. Feeling aggrieved by the Stop-work notice and Speaking Order, appellants instituted Long Cause Suit No.631 of 2020, in the City Civil Court, questioning the legality and correctness of the notice and Speaking Order. Pending suit, the learned trial Court declined, to restrain the Corporation from demolishing the Suit Construction. That order is challenged in this Appeal From Order.

8 Learned counsel for the appellants would largely rely on two documents, to contend that the Suit Structure was in place, since before April, 1961 and, therefore, it was a "tolerable structure"; First document is property tax bill and second, measurement report dated 9th March, 2020 of the assessor and Collector, H (East) Ward, which reads as under;

> " As per your above-referred letter, measurement of five rooms, on site inspection has been taken on 9th March, 2020 along with your representative and this office representative and

> found the same measurement as per Annexure "A" attached herewith.
>
> As per this office record for the year 2004-05, the 1st date of assessment is prior to 1961-62."

Learned counsel for the appellants, would, vehemently, argue that the assessment extracts and the measurement report clearly spell out that suit construction was in existence prior to 1961-62 and therefore, it was a "Tolerable Structure". Appellants, therefore, deny that notice structure was constructed in recent past and that construction was ongoing, when notice under Section 354A of the MMC Act was issued. To put it differently, it is appellants' case that Corporation could not have issued the notice under Section 354A of the MMC Act, reason being the evidence on record in clear terms imply that the suit structure was in existence prior to 1961.

9 Mr. Godbole, learned Senior Counsel for the Respondent No.4 and Mr. Vyas, learned counsel for the Corporation submitted that evidence on record, prima-facie, suggests two facts;

(1) Firstly, that old chawl on land CTS No.2591 to 2595 was demolished before 2003, which is evident from the plaint, Court Commissioner's report and survey map;

(2) Secondly, photo-graphs placed on record by the Corporation in affidavit-in-reply, clearly show, it was recent and ongoing construction.

Mr. Godbole submitted, plaintiffs ventured to raise new construction taking advantage of the composite property tax bill in respect of two old structures, standing on Survey Nos.2591 and 2595, assessed to taxes since 1961. Submission is that, property tax bill is of no avail, reason being chawl, which was assessed to taxes along with the First Structure was not in existence since 2003. Mr. Godbole, therefore, submitted, the order passed by the trial Court is neither illegal nor perverse and, therefore, no interference is called for.

10 Material on record, which I have referred to here-in-above has prima-facie established that chawl behind the building abutting Nehru Road was demolished prior to 2003. It means since 2003 there was only one structure that was consisting of shops in respect of which tenants have filed the suit. Therefore, evidence on record, prima-facie, establish that the plaintiffs ventured to re-construct the chawl by taking advantage of composite property tax bill. However, just because the old chawl was assessed to taxes that itself would not further the case of the plaintiffs. Reason being there is ample evidence on record, establishing a fact that since 2003 there was no construction on the subject land except the said First Structure. Besides, the photo-graphs and affidavits filed by the Corporation also show, construction was erected on CTS Nos.2583 and 2596 was recent construction and not old one, as sought to be projected by the plaintiffs.

11 For all these reasons, the order calls for no interference. Appeal is dismissed with all applications therein.

(SANDEEP K. SHINDE, J.)

12 In consideration of the facts of the case, I am not inclined to extend the ad-interim relief. The request is rejected.

(SANDEEP K. SHINDE, J.)