

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 714 / 2019
Alongwith
Civil Application (CAA) No. 851 / 2019
in
Appeal from Order No. 714 / 2019

Rakesh Kishanlal Kolhil

... Appellant

Versus

The Municipal Corporation of Greater
Mumbai and Anr.

... Respondents

Mr. Pradeep J. Thorat i/by S.S. Redekar, Advocate for Appellant.
Mr. R.Y. Sirsikar, Advocate for MCGM.

CORAM	:	SANDEEP K. SHINDE, J.
RESERVED ON	:	29 th MARCH, 2022.
PRONOUNCED ON	:	1 st APRIL, 2022.

P.C.

1. Appellant-Plaintiff was called upon to show sufficient cause as to why the unauthorized construction of following nature, described in the schedule of notice dated 5th June, 2017 should not be put down;

(i) Unauthorized construction of shed by using MS angles and Fiber

mat ad-measuring size 12.30 m x 2.95 m having approx. height 4.25 meters;

(ii) Unauthorized construction of kitchen by constructing brick walls and temporary partitions including loft ad-measuring size of kitchen area is 4.80m x 1.90 m having height of 3 meters.

. Whereafter, the Designated Officer of the Municipal Corporation of Greater Mumbai, upon perusing the documents submitted by the Appellant, concluded, that evidence produced, does not prove that notice structure was tolerable or authorized. As a result, Appellant was directed to remove the notice structure, within seven days. After which, Appellant instituted the suit and challenged validity of notice, issued under Section 351 of the Mumbai Municipal Corporation Act and order of the Designated Officer.

2. Pending suit, vide order dated 28th June, 2019, the learned trial Court refused to protect the suit construction from pulling down. That order is challenged in this appeal under Order-43 Rule-1 read with Section 104 of the Civil Procedure Code. Although the interim protection was declined, the trial Court protected the suit

construction for a while, to enable the Appellant to file an appeal in the High Court. That protection was continued by this Court on 10th July, 2019 and till date it is in-force. Question is, whether 'the impugned order calls for interference' ?

3. Heard. Mr. Thorat, learned Counsel for the Appellant and Mr. Sirsikar, learned Counsel for the Corporation.

4. Indisputably, Planning Authority has not granted building permission for erecting the suit shed by using MS angles or constructing kitchen of considerable size. Mr. Thorat, learned Counsel for the Appellant, submitted though, Planning Authority had not granted building permission, yet the suit shed and the kitchen platform were in existence prior to 1961 and therefore suit constructions are tolerable and protected structures. Mr. Thorat in support of this contention, has relied two documents. First document is a letter dated 18th December, 1980 addressed by Superintendent, Bombay City Survey & Land Records, relating to Survey conducted in respect of C.S. No.1207 of Fort Division. The letter reads as under;

“Sir,
Please refs. to your letter No. NIL dated 5th Nov. 1980.
The structure in question is shown in Black mainted lines on C.S. No. 1207 of Fort Division which is depicted on C.S. Sheet No. 67 (O/c 3rd Edition of 1949). It means that the structure was in existence prior to 1949.”

. The second document is true ‘extract of plan’ which according to Mr. Thorat, was annexed to letter dated 18th December, 1980. Mr. Thorat submitted the suit shed and kitchen are situated in C.S. No. 1207 and extract of plan shows suit shed and kitchen was in place much before the detum line. I have perused both; letter and plan. It may be stated that, letter of Superintendent, Bombay City Survey & Land Records, does not refer to ‘plan’, at all. Thus, a letter of Superintendent, Bombay City Survey & Land Records and extract of plan are distinct and independent documents and do not relate to one-another. Furthermore, ‘plan’ relied on by the Appellant, is neither supported by affidavit of its’ Author or Authority, nor letter of Superintendent, Bombay City Survey & Land Records refers to plan. In spite of this fact, it is argued that when survey of C.S. No. 1207, was conducted, the suit structures were found its existence

prior to 1961-62 and therefore it needs to be protected as per the policy of Corporation. I am not in agreement with the submission of the Appellant. First reason is that letter of the Superintendent, Bombay City Survey & Land Records and extract of plan, are distinct and independent documents. Second reason is that letter dated 18th December, 1980 does not refer to plan. Besides, it is Plaintiff case that in August, 1980, his father had acquired interest in two shops; one from Mr. Namdeo Dharma Gaikwad and another from Ganesh Parshuram Chowhry. These documents read as under;

: 1 :

Bombay, 25th August, 1980.

To,
Shri Kishanlal Fakirchand,
263, Shahid Bhagatsingh Road,
Fort, Bombay 1.

I, the undersigned, GANESH PARSHURAM CHOWDHRY running a Cycle Repairing and Hire Shop at the above premises be to state that I am surrendering the Shop premises voluntarily and giving you its vacant and peaceful possession on my own accord.

Incidentally, I beg to state that my shop was registered under Shops & Establishment Act - 1948 under Registration No. A-I/-6877 and the same was not revalidated for the last two years.

Yours faithfully,
G.P. Chowdhry

: 2 :

Bombay, August, 1980.

To,
Shri Kishanlal Fakirchand,
263, Shahid Bhagatsingh Road,
Fort, Bombay 1.

I, the undersigned, Namdev Dharma Gaikwad running a Pan-Bidi Shop at the above premises beg to state that I am surrendering the above shop voluntarily and giving you its vacant and peaceful possession of the same on my own accord.

Yours faithfully,
Namdev Gaikwad

.
Contention is, these two shops, are the same as were shown in plan that was drawn after surveying C.S. No.1207. Any how it, could be seen, that these documents do not contain material particulars like location of shops; its dimension, boundaries and therefore seemingly do not relate with letter of Superintendent or so called plan, relied on by the Appellant. Thus, for want of better particulars of the shops, purchased for Plaintiffs' father, it cannot be

assumed that these shops were the same in respect of which, survey was conducted by the Superintendent, Bombay City Survey & Land Records, as sought to be contended. Therefore, prima-facie there is no evidence to establish that these shops were in existence prior to 1961-62. For all that reasons, no interference is called for in the impugned order. Appeal is dismissed including Civil Application therein.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally
signed by
MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Date:
2022.04.01
19:24:34
+0530