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CP-433-2021.odt

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CONTEMPT PETITION NO.433 OF 2021

IN

CIVIL APPLICATION NO.1684 OF 2018

IN

FIRST APPEAL NO.846 OF 2003

Shri Sayed Arshad Zaidi,
Age: 42 yrs., Occ: Business,
heir and legal representative of
Deceased Smt. Mehmood Fatima
Residing at 4/159, Ambedkar Nagar,
Worli, Mumbai-400 018

...Petitioner/
Appellant.

Vs

1. The Municipal Commissioner,
The Municipal Corporation of Greater Bombay
Mahapalika Marg, Fort, Mumbai-400 001.
2. The Addl. Commissioner (Estate),
The Municipal Corporation of Greater Bombay,
Mahapalika Marg, Fort, Mumbai-400 001
3. The Asstt. Municipal Commissioner (G-South),
The Municipal Corporation of Greater Bombay,
Mahapalika Marg, Fort, Mumbai-400 001,
4. Shankhla Realtors Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956 having its office at
A-1, Swati Manor, N.C.Kelkar Marg,
Opp: Shivaji Temple, Dadar,
Mumbai-400 028,

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5. Mr. Udaykant Jha
Chief Promoter of Radha Krishna
Co-operative Housing Society,
(Proposed), having his office at
C.S.NO.6/71, 7/71,
Lower Parel Division, G. South
Ward, Kamalpatra Chawl, Senapati Bapat
Marg, Lower Parel, Mumbai-400 030,

6. Mr. Murtaza Ali Rajkotwala,
M/s. Alamdar Infrastructure Pvt. Ltd.,
Marathon Innova Corporate Centre,
C-601, 6th Floor,
Off. Ganpatrao Kadam Marg,
Lower Parel, Mumbai-400 013

... Respondents

...

Mr. A.N.Mulla for the Petitioner/Appellant.

Mr. A.Y.Sakhare, Senior Advocate with Joel Carloes with Mr.
Santosh Parad with Mr. Om Suryavanshi i/by Mr. Sunil
Sonawane for Respondent Nos.1 to 3-MCGM.

Ms. Vidya Khatu with U.H.Deshpande for Respondent No.4.

Mr. Girish Godbole with Ms. Laxmi Jessani i/by M/s. Laxmi
Jessani for Respondent No.5.

Mr. V.R.Dhond, Senior Advocate with Mr. Mustafa Kachwala
with Ms. Roshani Sewlani i/by Kachwala Misar and Co. for
Respondent No.6.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : FEBRUARY 1, 2022.
PRONOUNCED ON: FEBRUARY 3, 2022.
(Through Video Conferencing)

JUDGMENT :

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Appellant in First Appeal No.846 of 2003 seeks to initiate action against the respondent nos.1 to 3 under the Contempt of Courts Act, 1971, for willfully disobeying two orders; one dated 30th January, 1985 passed by the Hon'ble Supreme Court in SLP's bearing nos. 6452, 7142 to 7145 and 10621 of 1985 and another dated 16th October, 2018 passed by this Court, in Civil Application No.1684 of 2018 in the subject First Appeal.

2 Briefly stated, it is Petitioner's case that;

Smt. Mehmood Fatima, predecessor-in-title of the petitioner-plaintiff was Vacant Land Tenant (VLT) of the Municipal Corporation of Greater Mumbai, in respect of the land admeasuring 1000 square yards, a part of C.S. Nos.6/71 and 7/71 at, Lower Parel Division at Senapati Bapat Marg, Worli, Mumbai-400 018 ('Suit Plot/Property'). That, Petitioner is grand-son of Smt. Mehmood. His father, Mustafa, constructed four chawls on the suit plot and accommodated 35 tenants. They were paying rent to him till 1980-81. In August, 1981, Corporation terminated the tenancy concerning Suit Plot and adopted eviction proceedings under Section 105B, of

the BMC Act. Before the warrant of possession could be executed in the eviction proceedings, eviction action was challenged, before the City Civil Court, Mumbai. The Principal Judge, City Civil Court, Mumbai vide order dated 14th July, 1983, quashed eviction orders. Whereafter, the Corporation challenged the order of the Principal Judge, City Civil Court, Bombay in batch of Writ Petitions. The Division Bench of this Court vide judgment dated 20th August, 1984 quashed the impugned judgment of the City Civil Court and upheld the eviction orders, passed by the Enquiry Officer of the Corporation under Section 105B of the BMC Act. It appears, the lessees (VLT) of the adjoining lands, forming a part of CS Nos.6 of 71 and 7 of 71 (respondents in Writ Petition No.4077 of 1983 and 4083 of 1983) preferred SLP Nos.6452, 7142 to 7145 and 10621 of 1985 against the judgment of the Division Bench. In these SLPs, following order was passed, on 30th January, 1985;

“ We observe, however that the petitioners will not be disturbed in their possession of the land so long as the land is not immediately required by the Municipal Corporation. We make it clear that, the Municipal Corporation will be the sole judge of such need.”

3 Be that as it may, indisputably, the judgment of the Division Bench was not, challenged by the petitioner or his predecessor-in-title. As a consequence, applicant ceased to be a tenant of the Corporation in respect of the land in question since 24th August, 1984, a date on which tenancy was terminated.

4 It is in the year 1991, Petitioner instituted, a Long Cause Suit No.9146 of 1991, against the Corporation, seeking decree to restrain the Corporation from recovering rent from the tenants in the suit property and in any way interfering with the petitioner's possession and enjoyment of four chawls or structures on the suit property situated at Senapati Bapat Marg, Worli, Bombay 400 018. The next prayer was for declaration that action of Corporation was illegal and without authority. The learned Judge, City Civil Court, Mumbai dismissed the suit, reason being, that the applicant/plaintiff failed to prove his, "lawful possession", in the suit property as on the date of instituting the suit. In the consequence, the learned Judge declined decree of perpetual injunction sought by the Petitioner.

5 Findings recorded by the Learned City Judge, were as under;

a. That on 6th July, 1998 (Possession Receipt Exhibit 10) illustrates that possession of chawls was taken by officials of Corporation in presence of Police officials;

b. The Plaintiff cannot allege any highhandedness on the part of Corporation and cannot contend that no possession of the property was given to Corporation;

c. That Plaintiff has right under Statute to claim compensation, in respect of standing chawl, he has independent recourse to adopt;

d. Pursuant to eviction order passed under Section 105-B, of the MMC Act, and the subsequent order, of Hon'ble High Court in Writ

Petition No.4081 of 1985, Corporation has legally taken possession of the property and tenants have attorned the tenancy rights in favour of Corporation;

e. The status of the plaintiff to the Suit Property after ejectment proceedings was that of trespasser and such possession having taken by the Corporation on 6th July, 1998, nothing remains in plaintiff's assertion against the Corporation.

6 The judgment and decree dated 18th February, 2003 in L.C.Suit No.1964 of 1991, came to be challenged in First Appeal No.846 of 2003. Pending appeal, appellant moved a Civil Application No.4814 of 2011, seeking order to restrain the Corporation from granting any permission and/or sanction to any plan for development of the suit property, including demolishing structures standing on the suit property and/or constructing any building or buildings on the

suit property. Civil Application No.4814 of 2011 ('First Civil Application' for short) was heard by this Court and on motion made by Mr. R.A.Thorat, the learned counsel appearing for the applicant vide order dated 22nd July, 2014 granted permission to withdraw the Civil Application with liberty to adopt 'appropriate proceedings'. Whereafter, in February, 2018, the appellant moved second Civil Application No.1684 of 2018. Strictly speaking, in substance, prayers in the second Civil Application were similar, to the prayers made in the first Civil Application, that to say; restrain Corporation from granting permission for developing the Suit Plot. To be precise, the second Civil Application prayer reads as below;

- (i) The Municipal Corporation of Greater Mumbai be directed to withdraw, revoke, cancel the Intimation of Disapproval (IOD) dated 11th October, 2011 issued under D.C.Regulation No.33(7) to the respondents and further be restrained from carrying out any development work on CS No.6/71 and 7/71, Lower Parel Division, Senapati Bapat Marg, Worli, Bombay;

7 It may be noted that the, Second Civil Application (which is pending till date) came up for consideration on 23rd July, 2018 and 27th September, 2018; when at the request of the applicants, hearing was deferred. Again it came up for consideration on 16th October, 2018 and at the request of the learned counsel for the Corporation, hearing was adjourned to 29th November, 2018. However, on 16th October, 2018, the learned counsel for the respondent-Corporation, made a statement that in the, meanwhile, “Corporation will not take further steps”, and hearing was deferred and scheduled on 29th November, 2018. The application did not list on 29th November, 2018, for hearing but listed on 9th July, 2019. On that day, hearing was adjourned to 22nd July, 2019 and thereafter on 1st August, 2019; 6th August, 2019; 21st August, 2019; 11th October, 2019 and 5th December, 2019. The orders passed on these dates, do not show that the statement made by Corporation’s counsel, on 16th October, 2018, was continued nor the orders imply that the petitioner sought the extension of statement. Thus, to be stated that statement made by the Corporation’s counsel on 16th

October, 2018 was in force and binding on the Corporation till 29th November, 2018 and not thereafter.

8 In the meantime, pending First Appeal, the tenants, occupying the tenements in chawls, (hereinafter called ‘Kamal Patra’ Chawl) formed, Radhakishan Co-operative Housing Society (Proposed) in March, 2011 and decided to re-develop the Suit Property, through M/s. Shankla Realtors Private Limited (Respondent No.4). Improvement Committee of the Municipal Corporation of Greater Mumbai accepted the proposal of respondent no.4; followed by the Letter of Intent. May be for some reason, the proposed housing society of the tenants, appointed M/s. Alamdar Infrastructure Private Limited (Respondent No.6) as developer. The Municipal Corporation vide Resolution No. 137 dated 24th November, 2020 approved the appointment of Respondent No.6 as, ‘Developer’ in place of Shankala Realtors Private Limited (Respondent No.4). In February, 2021, Improvement Committee accepted the proposal of the Respondent No.6 under the Regulation 33(7) of DCPR 2034; followed by approval of Technical Committee. On 18th October, 2020, Letter of Intent was

issued in favour of M/s Alamdar Infrastructure Private Limited; on 25th October, 2021, Chief Fire Officer issued NOC and on 2nd December, 2021, IOD was issued. On 3rd December, 2021, structures on the suit property were demolished and the occupants were given temporary alternate accommodation under the agreements dated 5th October, 2021.

9 Corporation has brought the aforesaid facts on record supported by requisite development permissions. These permissions have not been challenged in “appropriate proceedings” although liberty was granted by this Court. It may also be noted that although the second Civil Application was filed in February, 2018, it was not moved by the applicants since then. It seems petitioner chose to remain silent since after filing second Civil Application. As such, in absence of any restraint order, Corporation after following the due procedure, has granted above -stated development permissions.

10 In the back-drop of aforestated facts all of a sudden, on 4th December, 2021, Petitioner filed instant Contempt Petition,

seeking action against the respondents under the Contempt of Courts Act, 1971, for disobeying two orders; one dated 30th January, 1985 passed by the Hon'ble Supreme Court and another order dated 16th October, 2018 passed in the Civil Application No.1684 of 2018 in the subject First Appeal.

11 In so far as the order of the Hon'ble Supreme Court in SLPs is concerned, it may be stated that petitioner, in paragraph 4(ii) of Petition has admitted that the SLPs were filed by other lessees and not by him or his predecessor-in-title. Paragraph 4(iii) reads, as below;

“iii) The Petitioner states and respectfully submit that, the Corporation issued Notice u/s. 105B of B.M.C. Act and an Inquiry was conducted. The Ld. Enquiry Officer was pleased to direct Petitioner to vacate land. The Petitioner challenged it by preferring Appeal in the City Civil Court which was allowed. Feeling aggrieved Corporation preferred Writ Petition in High Court which came to be allowed. The order of Hon'ble High Court was challenged by Co-lessees in Apex Court by way of S.L.P.'s bearing No.6452, 7142 to 7145 and 10621 of 1985 in the Hon'ble Supreme Court. All these S.L.P.'s were dismissed.”

In consideration of these facts, I hold that the eviction order passed under Section 105-B of the Act, so far as the suit plot is concerned,

has attained the finality. Even otherwise, the learned City Court Judge in Judgment in Suit No.9164 of 1991 (instituted by the Petitioner) has observed that;

“ The adjoining two plot holders have taken the matter to the Hon’ble Supreme Court against the order of the High Court of Judicature and those Appeals (SLP was dismissed by the Hon’ble Supreme Court on 10th September, 1991).”
(emphasis supplied)

12 For all that reasons, Petitioner’s contention that, development permissions, granted by the Corporation and/or structures were demolished in defiance of order dated 30th November, 1985 of the Hon’ble Apex Court, is rejected.

13 As far as alleged breach of, the order dated 16th October, 2018 passed in Civil Application No.1684 of 2018 is concerned, it may be stated that on 16th October, 2018, Corporation’s advocate, stated that Corporation shall not take further steps till next date,i.e., 29th November, 2018. Whereafter, the application came up for consideration, on seven occasions, i.e., on 9th July, 2019, 22nd July, 2019, 1st August, 2019, 6th August, 2019, 30th August, 2019, 11th

October, 2019 and 5th December, 2019. Yet, statement of Corporation's counsel was not continued nor the orders imply that Petitioner sought extension of statement. In other words, 'Statement' of counsel, was operative and binding on Corporation till 29th November, 2018. Hence, statement, being not continued, it 'ceased' to bind the Corporation from and onwards 29th November, 2018. For these reasons, Petitioner's contention that Corporation willfully disobeyed order/statement/assurance dated 16th October, 2018 requires no consideration. It is rejected.

14 Mr. Mulla, learned counsel for the petitioner, would largely relied on two counter-affidavits of the Petitioner; one sworn on 25th January, 2022 and another on 29th January, 2022. Mr. Mulla contended, that it is implicit from Development Agreement executed by the Respondent No.6 and LOI, that Corporation as well as developer, were aware of order of the Hon'ble Supreme Court and the order dated 16th October, 2018. Yet, in defiance of these orders, both proceeded to develop the Suit Plot. Mr. Mulla has taken me through the affidavits, wherefrom it appears or looks like, the

petitioner has challenged/questioned development permissions, IOD, LOI. Still and on, if he is aggrieved by the development permissions, he ought to have adopted “appropriate proceedings”, in accordance with liberty that was sought by him, while withdrawing first Civil Application. Yet, the petitioner has not adopted, “appropriate proceedings”, and, therefore, issue, relating to legality of Development Permissions, cannot be considered in the Contempt Proceedings.

15 For all that reasons, Contempt Petition is dismissed.

(SANDEEP K. SHINDE, J.)