

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.39 OF 2023

with

INTERIM APPLICATION NO.392 OF 2023

Prema Sadanand Shetty ... Appellant

Versus

The Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Ms.Veena Thadhani with Mr.Vishal Thadhani, for the Appellant.
Mr.R.Y.Sirsikar, for the Respondent No.1/MCGM.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 13, 2023

PC.

- 1.** Heard learned Counsel for the appellant and learned Counsel for the Municipal Corporation.
- 2.** This appeal is directed against an order dated 22 December 2022 passed by the learned Ad-hoc Judge, City Civil Court, Bombay, on a draft Notice of Motion as filed by the appellant/plaintiff in Long Cause Suit No.2904 of 2022. By the impugned order, the ad-interim relief as prayed for, on the draft Notice of Motion, has been rejected.
- 3.** The dispute in the suit as filed by the appellant / plaintiff concerns an action being taken by the respondent-municipal corporation against the appellant under Section 351(1A) of the Mumbai Municipal Corporation Act, 1888 (for short '**the Act**'). The appellant was issued a notice under Section 351(1A) of the Act calling upon the appellant to show cause as to why the unauthorized construction on the open space

for restoration of syntex water tanks by constructing structure using R.S.J. section of the area as shown in the sketch annexed to the notice, undertaken without permission of the competent authority of the municipal corporation, should not be removed/altered or pulled down. The appellant responding to the show cause notice submitted documents vide the appellant's letter dated 23 August 2022 contending that the objected structure is old and legal. A speaking order dated 1 December 2022 came to be passed by the Designated Officer, Ward "B" of the municipal corporation, not accepting the appellant's documents and the appellant's case to come to a conclusion that the works in question are unauthorised and the same are liable to be demolished. The order recorded that if the structure is not removed by the appellant within a period of 15 days from such order, it shall be removed by the municipal corporation. It is in these circumstances, the appellant approached the City Civil Court, Bombay, in the suit in question and moved the draft notice of motion on which the impugned order is passed.

4. Ms.Thadhani, learned Counsel for the appellant has drawn the Court's attention to various documents as placed on record. Her contention is that the landlord never raised any objection for putting up the structure to put up the syntex tanks. She has also drawn Court's attention to the consent terms entered between the landlord and the appellant in RAE Suit No.144/503 of 1984 filed before the Small Causes Court at Bombay. Such suit was disposed of by an order dated 6 March 1997 in terms of the consent terms dated 26 February 1997 as entered between the landlord and the appellant. In paragraph 10 of the consent terms which specifically provided that the landlord had consented the appellant to put up two syntex water tanks, each of the size not more

than 6 ft. X 6 ft. X 6 ft. in the open compound adjacent and just behind Shop No.17 and Room No.16, upon the area of 100 sq.ft, at a height of about 6 ft. upon a platform of girders, after obtaining requisite permission from the lessor of the land being the municipal corporation if necessary, and for which, an amount of Rs.150/- was liable to be paid by the appellant to the landlord. It was also agreed that the space below the water tanks were neither to be enclosed nor constructed upon or used by the appellant for any purpose whatsoever including for storage of goods etc. It was also agreed between the appellant and the landlord that the appellant had agreed that the appellant had no right, title and interest of any nature whatsoever in so far as the said area of 100 sq.ft. or the land below the water tank or to any portion in the compound of the building.

5. Ms.Thadhani has also relied on the letter dated 19/20 November 1996 of the municipal corporation which was issued by the Public Health Department (Insecticide Branch), whereby the Assistant Insecticide Officer has stated that as far as its department is concerned, it had no objection to retain the syntex tanks, provided the tanks must maintained in mosquito proof condition and accessible for inspection at all the times.

6. Relying on these documents, Ms.Thadhani submits that the angled structure mounting the water tanks has continued to exist for a long time and as seen from the Corporation's own letter dated 19/20 November 1996, since the year 1996 which is almost about for about 26 years. Her contention is that the landlord has recently registered a complaint in regard to the water tanks with the municipal corporation

which has prompted the municipal corporation to issue the impugned notice under Section 351(1A). The contention is that the landlord is using the municipal corporation to cause harassment to the appellant. Ms.Thadani has submitted that a regularization application has been filed by her client with the municipal corporation on 9 January 2023 for regularization of the structure objected by the municipal corporation. She submits that the landlord can have no objection for regularization as the said consent terms between the appellant and the landlord permitted the appellant to put up the said structure to mount the water tanks, are legal and subsisting under the orders passed by the Small Causes Court which continue to subsist. Learned Counsel for the municipal corporation submits that the application as filed by the appellant is not a proper application as the regularization application is required to be made by an Online and procedure as set up by the Corporation.

7. In my opinion, it is quite clear that the appellant has intended to make a proposal for regularization of the structure installing water tanks, as also the landlord at all times had no objection for installation of the water tanks, as seen from the consent terms and the orders of the Small Causes Court. Thus, the only issue was that the municipal corporation was not approached for a permission prior to installation of the water tanks although the water tanks have continued to be so installed for almost about 26 years and for such period even the Municipal Corporation had not raised any objection. In these circumstances, it is appropriate that the appellant is permitted to file / pursue the regularization application. In the event, the application as already filed by the appellant, is not a proper application, the appellant

shall make fresh application within three weeks from today as per the Online procedure as prescribed by the municipal corporation. If such an application is made, let the same be decided as expeditiously as possible and within a period of six weeks from the date of submission of the application.

8. In the meantime, till the regularization application is decided, the municipal corporation shall not take any coercive action under the orders passed by the municipal corporation under Section 351(1A) of the MMC Act subject matter of the suit in question. Such protection as granted to the appellant shall continue to operate till the appellant's regularization application is decided by the municipal corporation and an order passed thereon is communicated to the appellant. Ordered accordingly.

9. In view of the above directions, Ms.Thadhani has rightly pointed out that the suit itself can be disposed of. Accordingly, L.C.Suit No.2904 of 2022 pending before the City Civil Court, Bombay, is disposed of in terms of the above order. All contentions on such proposed regularization proceedings are expressly kept open.

10. Appeal from Order is disposed of in the above terms. No costs.

11. As the appeal itself is disposed of, pending Interim Application would not survive, the same is disposed of.

(G. S. KULKARNI, J)