

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.67 OF 2023
WITH
INTERIM APPLICATION NO.842 OF 2023**

Mr.Hindkumar Shrikant Yadav

..Appellant

Vs.

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

Mr.Jagdish N. Jayale, for Appellant.

Mr. R. Y. Sirsikar, for the Respondents-MCGM.

Mr.Satish Sharma – Intervener in person present.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 31, 2023

P.C.:

1. Heard learned Counsel for the appellant, learned Counsel for the Municipal Corporation and Mr.Satish Sharma, intervener in person.

2. This appeal takes an exception to an order dated 24 January 2023 whereby on a draft notice of motion in Long Cause Suit No.283 of 2023 filed by the appellant/plaintiff, ad-interim relief has been refused. The dispute in the proceedings before the City Civil Court concerns the premises which are stated to be purchased by the appellant/plaintiff by a registered sale deed dated 15 July 2017. It appears that in respect of

such premises, a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short '**the Act**') was issued by the municipal corporation on 16 August 2013 objecting to putting up of steel rolling shutters. After a period of almost nine and half years i.e. on 2 January 2023 the municipal corporation with the help of police intended to execute the notice by removing the steel rolling shutters. It is in these circumstances, the appellant pointing out that he had purchased the suit property and to whom no notice was issued by the municipal corporation, made a detailed representation on 13 January 2023 to the Designated Officer, 'H' Ward of the municipal corporation, which was not considered. The appellant eventually filed the suit in question and has moved the draft notice of motion praying for a temporary injunction to restrain the municipal corporation from taking any coercive action under the notice dated 16 August 2013.

3. Mr.Satish Sharma who claims to be the landlord, had intervened in the suit. He has also filed a caveat. His contention is that the building is in dilapidated condition and he had also objected to putting up the steel rolling shutters stating that it is illegal and were installed without obtaining permission from the municipal corporation by the erstwhile owner – predecessor in title of the appellant. He submits that he has also filed Suit No.5658 of 2006 before the City Civil Court, Bombay, against the predecessor-in-title of the appellant/plaintiff. Now a chamber summons has been filed by him to implead the appellant/plaintiff as a

party to the suit in view of the appellant/plaintiff having purchased the suit property under a registered sale deed dated 15 July 2017.

4. The learned Trial Judge in rejecting the ad-interim relief so as to further hear the parties on merits of the matter, in paragraphs 15 and 16 has observed as under:-

“15. No doubt, in the documents filed by plaintiff, a shutter is shown as intact to the structure in photographs. But, some photographs are also placed on record by caveator and defendant by which they claiming that the impugned notice and speaking order is executed. From the submissions made by plaintiff and caveator, it revealed that they both are claiming their respective possession upon the suit premises. The caveator has not filed his detail say and documents. Hence, at present from the photographs filed by the parties, it cannot be inferred that exactly who is in possession of the suit premises / This is not a stage to record the findings as to who is in actual possession of the suit premises.

16. Admittedly, the impugned notice and order under challenged is of the year 2013. The plaintiff came in picture regarding the suit premises in the year 2017. As per submissions of BMC and proposed demolition report, defendants have executed impugned notice in the year 2022 itself. Hence, whether plaintiff is really in possession of the suit premises or not ? Te suspect needs to be decided on merits and by giving an opportunity to the caveator to file written objection. Record further shows that in respect of the suit premises another suit is pending in between the caveator and previous occupier of the suit premises. Hence, I am of the view that, at present plaintiff has not made out a case to grant ad-interim relief as prayed. Hence, the order.”

5. The grievance of the appellant/plaintiff on the impugned order is two fold; firstly that if at all the action of the municipal corporation was on the basis of notice issued under Section 351 of the Act dated 16 August 2013, that too in the year 2023, was unreasonable and a patently illegal action, more particularly as the appellant/plaintiff was

not aware of any such notice, having purchased the property in the year 2017. It is also the contention of the appellant/plaintiff that at least an opportunity of a hearing ought to have been given to him by issuance of a fresh notice to him so that all contentions could be put forth before the municipal corporation and/or appropriate action could have been taken by the appellant/plaintiff to remove illegality, if any. It is the appellant/plaintiff's contention that however, at the behest of the intervener, the appellant/plaintiff could not have been taken by a surprise by the municipal corporation by resorting to such coercive / forcible action to remove the steel rolling shutters. It is the contention of the appellant/plaintiff that such complexion of the facts ought to have been appropriately appreciated by the learned trial Judge in considering the ad-interim application on the draft notice of motion.

6. On the other hand, learned Counsel for the municipal corporation would not dispute that apart from the notice dated 16 August 2013 issued under Section 351 of the Act, there is no fresh notice issued to the appellant/plaintiff. It also appears to be not in dispute that the municipal corporation was not aware and had not taken cognizance that the appellant/plaintiff has now purchased the suit premises by a registered sale deed dated 15 July 2017 and without verifying the current records resorted to take action against the appellant/plaintiff.

7. Insofar as the intervener is concerned, he claims to be the owner of the entire building. He has already instituted a suit against the

predecessor-in-title of the appellant/plaintiff. Such suit is pending. There are no interim orders passed on such suit much less in operation, which in any manner prohibited the predecessor-in-title of the appellant/plaintiff not to sale and/or create any third party rights in respect of the suit property. Also there appears to be a chamber summons taken out by the intervener in the said suit to implead the appellant/plaintiff as a defendant. It is the contention of the intervener that the building has been categorized as dilapidated and therefore, appropriate action needs to be taken by the municipal corporation. In my opinion, all these contentions, the intervener needs to pursue either with the municipal corporation or in the suit instituted by the intervener to which now the appellant/plaintiff is proposed to be impleaded as a party and to which the municipal corporation is already a party.

8. At this stage, learned Counsel for the municipal corporation states that in fact on 21 November 2022 an action was taken under the impugned notice dated 16 August 2013 and the objectionable structures were removed, however, this has not been reflected either in paragraphs 15 and 16 of the impugned order. In my prima facie opinion, it appears to be an absolutely high handed action on the part of the concerned municipal officer who has taken the said action. This firstly for the reason that it is unconscionable that the notice dated 16 August 2013 under Section 351 of the Act, for the first time could be executed after about nine years. There are no special reasons as shown and placed on

record even before the High Court as to how such an unreasonable action after such a long lapse of time could be taken by the concerned officer of the municipal corporation, leaving aside all other important municipal work that too in regard to something like steel rolling shutters – subject matter of a notice dated 16 August 2013. It appears that there was some sinister motive on the part of the concerned officer to abuse the powers vested in him which is required to be enquired into by the appropriate enquiry officer to be nominated by the Municipal Commissioner. This for the reason that although the municipal officer may have powers but they have equally onerous public responsibility and public duties to exercise such powers under the Act fairly, reasonably and arbitrarily. It cannot be countenanced that any municipal officer at whichever level would have authority to violate the valuable rights of property enshrined under Section 300A of the Constitution on the citizens not in accordance with law and in such highhanded and arbitrary manner. Equally, it will not be permissible for any municipal officer as in the present case to be so unreasonable that without any reasonable notice and without verifying the facts straightway take an action against the appellant/plaintiff under notice dated 16 August 2013 that too in the year 2022. If such is the conduct which is glaring and *ex facie* revealed by the record then such action on the part of the municipal officer cannot so unnoticed by the highest municipal authority. Hence, the Municipal Commissioner, Mumbai

Municipal Corporation Greater Mumbai, is directed to appoint an Enquiry Officer within a period of two weeks from today and inquire into such conduct of the concerned officer. This is a serious issue as noted above as by such action on the part of the concerned municipal officer there is an absolute breach of the constitutional rights of the appellant/plaintiff under Article 300A and Article 19(1)(g) of the Constitution.

9. It is unfortunate that even such glaring facts have been overlooked by the learned Trial Judge in passing the impugned order. Apart from the aforesaid order and apart from the enquiry which would now be conducted against the concerned municipal officer as noted above, the municipal corporation is directed to issue a fresh notice to the appellant/plaintiff under Section 351 of the Act and after following the procedure known to law namely after permitting the appellant/plaintiff to file his reply to such notice as also by permitting landlord to file reply, if he so desires, pass appropriate orders in accordance with law.

10. Let such notice be issued within two weeks from today. If such notice is received, a reply be filed by the appellant/plaintiff as may be permissible in law and after hearing the parties, an appropriate order be passed as expeditiously as possible. Ordered accordingly.

11. In the meantime, the report of the enquiry and any action taken against the concerned officer be placed on record of this appeal within a period of four weeks from today.

12. In view of the above orders, the impugned order is set aside. As a fresh notice is directed to be issued, the municipal corporation is directed not to take any coercive action in regard to the suit structure till a fresh order is passed by following the appropriate procedure as noted above.

13. All contentions of the parties on any such notice are expressly kept open.

14. In view of the above directions, nothing would survive in the Long Cause Suit No.283 of 2023. Hence, the same would also stand disposed of.

15. All contentions of the parties in any other pending proceedings are expressly kept open.

16. A copy of this order be forwarded to the Registrar of the City Civil Court, Mumbai, for recording that the Long Cause Suit No.283 of 2023 has been disposed of.

17. The appeal is disposed of in the above terms. No costs.

18. In view of disposal of the appeal, pending Interim Application would not survive, the same is disposed of.

[G.S. KULKARNI, J.]