

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 114 OF 2023
WITH
INTERIM APPLICATION NO. 1449 OF 2023

Mr. Surendra Subhedar Singh

...Appellant

Vs.

Asst. Municipal Commissioner, MCGM

...Respondent

Mr. G. S. Godbole i/b. Mr. Shyam Singh for Appellant.

Mr. Dharmesh Vyas with Ms. Smita Tondwalkar for Respondent/MCGM.

Ms. Minakshi Rathod, Road Engineer, "T" Ward present.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 16, 2023

P.C.:

1. This is an appeal filed by the appellant/plaintiff assailing an order dated 23 January, 2023 passed by the learned Ad-hoc Judge, City Civil Court at Mumbai whereby a notice of motion (Notice of Motion No.4704 of 2022) filed by the appellant/plaintiff praying for a temporary injunction against the respondent/Municipal Corporation (for short, "MCGM") has been dismissed.

2. The suit in question (L.C. Suit No. 2801 of 2022) came to be filed by the appellant/plaintiff being aggrieved by a notice issued by the respondent (for short "MCGM") under Section 314¹ of the Mumbai

¹ Power to remove without notice anything erected, deposited or hawked in contravention of section 312, 313 or 313A
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Municipal Corporation Act, 1888 (for short, “MMC Act”). The prayers in the suit are to the effect the said notice be declared to be null and void and for a permanent injunction to restrain the MCGM from implementing the impugned notice.

3. At the outset, it is required to be stated that in paragraph 3(a) of the plaint the appellant/ plaintiff has claimed to be the owner and occupier of the land described as CTS No.1491 admeasuring 175 sq. mtrs. situated at Mulund (West), Mumbai. In paragraph 1 of the plaint, the appellant/ plaintiff has stated that the suit pertains to stalls which are occupied by his tenants. It is his case that there are 17 stalls which are put up on the said land by his predecessor- in- title who is stated to be one Mr.Jamadarsingh Gokulsingh. The land in question forms part of the road widening project being undertaken by the MCGM in the public interest namely road widening on JST Road outside the Mulund Railway Station.

4. The notices under Section 314 of the MMC Act were issued to the occupants of the stall holders who are 17 in number. The occupants of the stalls have not filed any independent proceeding as it appears that the present suit is filed by the appellant/ plaintiff espousing the cause of the said stall holders.

5. At this juncture, it is required to be noted that, when the appellant/

plaintiff although makes categorical averments in regard to his ownership and title to the land in question, which is subject matter of road widening by the MCGM, not a single document of ownership, as the law would recognize to be any document of title, is placed on record by the Appellant. There is no document to show even the title of the appellant's predecessor- in- title. It appears that on such basic infirmities and surprisingly asserting the ownership rights on the land, the suit in question was filed. Further discussion is more interesting.

6. The case of the MCGM is also that in respect of the road widening project in question, which is being obstructed by the appellant and his unauthorized stall holders, there were other 138 persons on the adjoining land of the MCGM, who were in fact permitted to put up stalls by the MCGM who were also issued notices under Section 314 of the MMC Act. The association of the said 138 stall holders had approached the City Civil Court in a suit [L.C. Suit (Stamp) No.2927 of 2020], who were also denied any relief of a temporary injunction, by an order dated 05 March, 2020 passed by the City Civil Court. The said association, thereafter, approached this Court in the proceedings of Appeal From Order No. 217 of 2021 on 02 January, 2021 which came to be dismissed by a judgment and order dated 09 March, 2022 passed by the Co-ordinate Bench of this Court. The road widening project in question being a public project, this

Court in its judgment observed that it is settled law that if a project undertaken by the local body is beneficial for larger public, inconvenience to small number of people is to be accepted and their individual interest or for that matter smaller public interest must yield to the larger public interest. It was observed that the stalls in question were abutting railway station, in the suburbs of Mumbai. The stalls which the appellant intends to protect is also abutting the railway station and are obstructing the public project. The MCGM has contended that the public project of road widening and putting up of a storm water drainage system is of substantial importance, to avoid situations of water-logging in the rainy season causing serious public inconvenience. Also, since the suit stalls are constructed along the road, having large volume of vehicular traffic, MCGM had decided to shift the authorized licensed stall-holders, to alternate sites so that the road widening can take place. Such stalls were put up after prior permissions were given to them in the manner known to law as sanctioned by the Municipal Corporation under Section 312 of the MMC Act and it is only in that context, the alternate sites to put up the stalls were offered to the said stall holders subject matter of the said proceedings offering any alternate sites to unauthorised stall holders would amount to a premium on illegality.

7. At this juncture, it is required to be stated that the stalls put up on the land in questions are illegally put up and they are totally unauthorized

stalls as no permission of the MCGM under Section 312 of the MMC at any time has been obtained. There is nothing on record that for putting up such stalls, any other permission for carrying out construction etc. was granted by the MCGM. This is also not the case of the appellant/plaintiff. The whole intention of the appellant appears to be to benefit himself in letting out unauthorized stalls and earn money from such unauthorized activity. There can be no other reading of the appellant's case. In fact, the stall owners in no manner appear to be aggrieved by the notice in question and it is only the appellant/plaintiff who claims to be owner, has appeared before the Court including to espouse the cause of his 17 stall holders. It is thus clearly seen that the 17 stall holders are not the persons aggrieved by the notices and therefore, clearly the law would warrant that the stall holders would yield to the notice. In any event, rank illegal stall holders cannot assert any rights in law.

8. Be that as it may, now the case of the appellant/ plaintiff can be considered whether any prima-facie case for a temporary injunction was at all made out. As noted above, although ownership of the strip of the land is claimed by the appellant, there is no document of title, much less any registered document placed on record to show that the appellant/ plaintiff is the lawful owner of the land in question. It appears from the record that a person known as Jamadarsingh Gokulsingh sometime in the year 1981

was asserting rights in respect of the land and was threatening the MCGM from asserting its rights qua the suit land. The MCGM had contended that it was the lawful owner of the land as seen from the perusal of the letter dated 26 May, 1980 addressed by the Deputy Municipal Commissioner, Zone V, to Shri. Baburao Shetye, Mayor of Bombay. The Municipal Commissioner in such letter categorically observed that the land in respect of which Jamadarsingh Gokulsingh was asserting rights, was of the ownership and belonging to the MCGM. He stated that if the dispute is of the ownership, it would have to be resolved before the Civil Court as also appropriate measurement can be undertaken. However Jamadrasingh Gokulsingh never filed a suit for declaration that he was the lawful owner of the land. This was not innocuous. It appears that Jamadrasingh Gokulsingh did not stop at this and however instead of resorting to law, he kept on asserting his purported rights in a very peculiar manner, that is by writing letters to the Governor, the Chief Minister, Minister for Social Welfare and the Minister for Urban Development and Finance. It does not appear to be a case that Jamadarsingh Gokulsingh himself had any document of title. At least nothing is produced on record to that effect. It appears that Jamadarsingh Gokulsingh at that time had illegally encroached on the land of the MCGM and was exploiting the said land. It appears that he was pressurizing the authorities to succumb to his request by approaching the different Government officials so that without

approaching the Court he could reap illegal benefits from the said land. This is clear from the reading of a letter dated 24 November 1981, addressed by the Deputy Municipal Commissioner, Zone V, to Jamadarsingh Gokulsingh informing him that the final decision of a senior counsel has been received in response to the letters addressed by him, which is sought to be accepted by the Municipal Commissioner recording that landing bearing Survey No. 1000, Hissa No.1 (part) of Village Mulund, admeasuring 175 sq. mtrs. belonged to him. It is difficult to believe such letter, as the original of this letter is not part of the record. Moreover such letter cannot be any document of title to the said land not only of Jamadarsingh Gokulsingh. The appellant in no manner can claim any right under the said letter. The reliance on the photocopy of such old letter is also not acceptable, which in fact is contrary to several other documents, which prima facie demonstrate MCGM's ownership of the suit land. In the city survey records the land has been shown to be owned by the MCGM. It also needs to be stated that even a sole revenue document namely 7/12 extract does not bear the name of the appellant/plaintiff. It is well settled that revenue documents are not title documents and are not reflective ownership of the land.

9. In the suit in question, before the City Civil Court, the MCGM contested the claim of the appellant/plaintiff by filing a reply affidavit and by annexing all the relevant documents to show that the ownership of the

land is of the MCGM. It is significant that these documents have been suppressed by the appellant and are sought to be produced by the MCGM in the present proceedings. One of the significant documents is a communication dated 12 March, 2009 issued by the City Survey Officer, Mulund to Jamadarsingh Gokulsingh as also to the Assistant Commissioner, T-Ward of the MCGM that the name of the MCGM has been entered in the City Survey Record in regard to the suit land. Jamadarsingh Gokulsingh had no grievance on such communication which was destructive of his claim of ownership of the suit land. He never adopted any proceedings to assert that the MCGM is not the owner after such appropriate entries were made. The City Survey Record which shows the name of the MCGM to be the owner of such land, was also placed on record of the City Civil Court by the MCGM.

10. It is thus clear that the appellant had miserably failed to make out a prima facie case not only on the ownership of the suit land but also failing to show any other legal right to occupy the land through his stall owners. The appellant's categorical case in the plaint praying for the relief in the suit is as also for the interlocutory relief of a temporary injunction is based on ownership of the land, however without any material and/or semblance of a case to support such right. In the absence of any legal rights being prima facie shown by the appellant, a relief of a temporary injunction was not be entitled to the appellant and/or could never have been granted, as

rightly rejected by the learned trial Judge, by the impugned order.

11. Despite such dismal position on record, Mr. Godbole would submit that the City Civil Court in passing the impugned order has not taken into consideration certain documents which would go to show the ownership rights of the appellant/plaintiff in respect of the said land. The said documents being the letter dated 26 May, 1980 addressed by the Deputy Municipal Commissioner, Zone V, to Mr. Baburao Shete, Mayor of Bombay and letter dated 24 November, 1981 addressed by the Deputy Municipal Commissioner, Zone V to Jamadarsingh Gokulsingh which are already discussed above. He submits that in such letter, the Deputy Commissioner has recognized the rights of Jamadarsingh Gokulsingh in respect of the said land. However, on a query made to Mr. Godbole as to whether such letters would at all confer any ownership right or whether such letter could at all be a title document, Mr. Godbole has fairly agreed that except for these letters and 7/12 extract, there is no title document showing the ownership of the land of the appellant. Except for such plea there is no case being made out against the impugned order.

12. The impugned order passed by the learned trial Judge is a well reasoned order it has taken into consideration all the relevant documents which were sufficient to consider the rights of the appellant/ plaintiff to seek such reliefs so as to come to a prima-facie conclusion that no rights are shown by the appellant in the land in question. In paragraph 21 of the

impugned order, the learned Judge observed that none of the documents relied by the appellant prima facie established a legal title of the appellant over the land. It was observed that the land was required for road widening and construction of storm water drain which was a public project. It was also observed that the claim of title of the appellant/plaintiff over the suit land was not based on any registered deed of conveyance. The documents as relied by the appellant were not the documents of title. Accordingly, the learned trial Judge has rightly come to a conclusion that prima-facie case for grant of temporary injunction was not made out by the appellant.

13. Learned counsel for the respondent is also correct in pointing out that the temporary injunction which was sought by the appellant was in respect of a public project and certainly considering the provisions of Section 41(h)(i) of the Specific Relief Act, 1963, the appellant/plaintiff was not entitled for any relief of a temporary injunction.

14. In the light of the aforesaid discussion, in my opinion, the learned trial Judge has rightly dismissed the notice of motion as filed by the appellant. No case is made out for interference of the present appeal. The appeal is accordingly rejected.

15. No costs.

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

[G.S. KULKARNI, J.]