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502ao-116-23-IA1479-23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.116 OF 2023
WITH
INTERIM APPLICATION NO.1479 OF 2023**

Shri.Jamnadas Patel	..Appellant
Vs.	
Municipal Corporation of Gr.Mumbai.	...Respondent

Mr. Virendra T. Dubey, for the Appellant.

Ms.Smita Tondwalkar, for the Respondent- Corporation.

Mr.Prasad Pednekar, Asstt. Engineer M/W. Ward present.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 15, 2023

PC. :-

1. Heard learned Counsel appearing for the appellant and learned Counsel appearing for the Municipal Corporation.
2. This appeal arises from an order dated 30 January 2023 passed by the learned Judge, City Civil Court, Mumbai, whereby ad-interim reliefs have been refused as prayed by the appellant on a draft notice of motion taken out in L.C.Suit (st) No.14600 of 2022.
3. The appellant moved the City Civil Court by the suit in question

assailing the action being taken by the municipal corporation by issuing a notice dated 9 December 2022 under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short '**the MRTP Act**'). By the said notice, the appellant/plaintiff was directed to remove the unauthorised temporary shed constructed by using G.J. & A.C. Sheet roof and M.S.Pipe, within a period of 15 days. The notice was replied by the appellant/plaintiff by his letter dated 20 December 2022 wherein a strange stand was taken by the appellant namely that the shed in question which although was described as temporary, the shed was a permanent construction. It is also contended by learned Counsel for the appellant that the structure is in the nature of permanent structure and the walls are permanently embedded in the earth. In paragraph (2) of the said reply, the appellant/plaintiff stated that the alleged construction has put up on the land which belonged to the Urban Development Public Health and Housing Department of the State Government and hence, the Municipal Commissioner would not have any authority to issue such notice. It was also contended that as the structure in question existed for a long period and not being a temporary construction, the impugned notice would be illegal.

4. The Designated Officer of the Municipal Corporation considering the said reply as filed on behalf of the appellant/plaintiff passed a

speaking order dated 20 January 2023 (page 54). Perusal of the speaking order would indicate that apart from the reply, there were documents submitted by the appellant/plaintiff which are primarily electricity bills, Pan Card as also shop establishment licence and other documents, which were submitted to the Designated Officer, taken into consideration. The Designated Officer observed that the said documents would not show that the construction of the suit structure in any manner was authorised and/or legal. Thus by such order, the appellant/plaintiff was directed to remove the noticed structure forthwith from the receipt of the said order, failing which the suit structure would be demolished by the municipal corporation at the risk, costs and charges of the appellant/plaintiff.

5. The appellant/plaintiff being aggrieved by the action of the Municipal Corporation has filed the suit in question and a draft notice of motion was taken out praying for a temporary injunction so as to restrain the Municipal Corporation from taking any action under the said notice issued under Section 54 of the MRTP Act and the consequential speaking order.

6. Learned Trial Judge considering the contentions as urged on behalf of the appellant/plaintiff was not persuaded to accept the case of the appellant/plaintiff that any prima facie case was made out for grant

of temporary injunction and has rejected the ad-interim relief.

7. Learned Counsel for the appellant/plaintiff in assailing the impugned order has limited submissions. On a query made to the learned Counsel for the appellant/plaintiff, he submits that there was no permission granted by the Municipal Corporation to put up the objected shed. He states that no plan was sanctioned / approved by the Municipal Corporation to put up such structure as complained in the suit notice. It is seen that not only in regard to the suit structure which is a shed but also in regard to the main structure which is in possession of the appellant/plaintiff, there is no permission to construct the same and it appears to be a rank unauthorised structure, being illegally constructed by the petitioner. Surprisingly, the Municipal Corporation has not taken any action against the said unauthorised structure and appears to have selectively targeted only the shed. This issue also was required to be looked into by the concerned municipal officer. Such observation was imperative as when the proceedings have reached the High Court, this Court cannot shut its eyes to such glaring illegality.

8. The only submission as made by Mr.Dubey, learned Counsel for the appellant is that there is electricity connection, water connection as also telephone connection, as also the premises being used for commercial purpose, there is a licence issued to the appellant/plaintiff

under the Bombay Shops and Establishments Act, 1948, hence the structure of the appellant/plaintiff be presumed to be legal and authorised. Learned Counsel for the appellant/plaintiff, however, is unable to support such contention either on any provisions of law or any binding decision of any Court which would support such proposition that merely because the electricity connection, water connection and a licence under the Bombay Shops and Establishments Act are availed by the occupant, the structure in question would become an authorised structure. Thus, such contention as urged on behalf of the appellant/plaintiff cannot be accepted. This apart, it appears that the appellant has no right, title and interest to occupy the land on which the main structure is constructed, which is clear, not only from the reply to the notice in question, but also, on a query made to the learned Counsel for the appellant, it is informed that the land belongs to the State Government. There is neither any allotment of the suit land in favour of the appellant nor there is any lease or licence granted by the State Government or any other public body of the State Government, authorising the appellant to use the land in question, much less to construct any structure thereon. It thus appears that the appellant/plaintiff is a rank encroacher on the Government land who has undertaken unauthorised construction and is nonetheless claiming

that the notice structure is authorized.

9. In these circumstances, no fault can be found in the order rejecting the ad-interim relief. The appeal itself is devoid of any merit nay an abuse of process of law. It is accordingly rejected. No costs.

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

11. The Municipal Corporation is permitted to take action as may be permissible in law.

[G.S. KULKARNI, J.]