



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.847 OF 2022
WITH
CIVIL APPLICATION NO.95 OF 2022

1. Naresh Gopaldas Sohanda,
Shop No.88 7 TG No.469-2/2,
Mulund Colony, Mulund (West),
Mumbai-400 080

2. Haresh Gopaldas Sohanda
Shop No.88 & TG No.469-2/2,
Mulund Colony, Mulund (West),
Mumbai-400 080

... Appellants

Versus

1. Municipal Corporation of Greater
Mumbai, Mahapalika Bhavan,
Mahapalika Marg,
Mumbai 400 001 through its
Commissoner

2. Ward Officer,
"T" Ward, Municipal Corporation
of Greater Mumbai,
Mulund Colony,
Mulund (West),
Mumbai-400 082.

3. Assistant Commissioner, Markets
Municipal Corporation of Greater
Mumbai, Mumbai

... Respondents

* * *

Mr. Minal J. Chandnani for the Appellants.

Mrs. Smita Tondwalkar for the Respondent-MCGM.

* * *

CORAM : SANDEEP V. MARNE, J.

DATE : 15 SEPTEMBER 2023

P.C.

. By this Appeal, the Appellants challenge the Order dated 15 January 2019 passed by the City Civil Court at Mumbai in Notice of Motion No.1861 of 2013. The Notice of Motion was filed by the Appellants-plaintiffs seeking the following prayer clause (a), which reads as under :

“(a) That pending the hearing and final disposal of the suit this Hon’ble Court be pleased to grant an Injunction restraining Defendants, their employees, servants and agents from in any manner demolishing shop numbers 88 and TG-469-2/2, Mulund Colony, Mulund (West), Mumbai-400 080 of the plaintiffs or in any manner evicting them from their present shops unless they allot permanent alternative accommodation of two shops of the same existing area as per the record of Defendant No.1 corporation.”

2. The City Civil Court has partly allowed Notice of Motion No.1861 of 2013 and has made the same absolute in terms of prayer clause (a) in respect of Shop No.88 only. It would mean that the prayer clause (a) sought in the Notice of Motion *qua* Shop No.TG-469-2/2 stands rejected. So to this limited extent, the present Appeal is filed.

3. Ms. Chandanani, learned Counsel appearing for the Appellants would firstly submit that as per the survey conducted by the Respondent-MCGM, the area of Shop No.88 is certified at 512 sq.ft.. That the Appellants would be satisfied if they receive alternative premises admeasuring the same area of 512 sq.ft. and if an assurance is given about allotment of alternate premises admeasuring 512 sq.ft., the Appellants would not seek any protection in respect of other Shop No.TG-469-2/2.

4. Alternately, Ms. Chandanani would submit that even other Shop No.TG-469-2/2 is a tolerable structure and the Appellants are covered by the scheme formulated by the State Government for rehabilitation of displaced persons. She would further submit that Shop No.TG-469-2/2 had also been in existence prior to the date 11 May 1965. She would further submit that as per the subsequent policy of the State Government formulated on 25 February 2004, even the structures erected after the relevant date of 11 May 1965 can also be considered as tolerable structures. She would therefore submit that the City Civil Court ought to have granted temporary injunction even in respect of other Shop No.TG-469-2/2.

5. Per contra, Mrs. Tondwalkar, learned Counsel appearing for

the Respondent-MCGM would oppose the Appeal and support the Order passed by the City Civil Court. She would submit that the survey on which the Appellants have placed reliance was carried out by the Revenue Department. That MCGM also carried out its own survey, according which the area of the Appellants' shop No.88, is found 17.69 sq. mts. which is equivalent to approximately 190 sq.ft. She would submit that the area which is certified by MCGM would prevail over the survey conducted by the Revenue Department. So far as Shop No.TG-469-2/2 is concerned, she would submit that no document has been placed on record by the Appellants-plaintiffs to indicate existence of the said structure prior to datum line of 11 May 1985. Therefore, she prays for dismissal of the Appeal.

6. Having considered the submissions canvassed by learned Counsel appearing for the parties, it is seen that the Appellants have not been able to produce any document on record to show existence of Shop No.TG-469-2/2 prior to datum line of 11 May 1965. By Circular dated 21 September 1973, the State Government has directed regularization of encroachments upto 11 May 1965. In this connection, the relevant provision of Circular dated 21 September 1973 reads thus :

“(a) Encroachments upto 11.5.1965 should be considered for regularization in accordance with the instructions contained in Government Circular, Memorandum, Urban Development and Public Health Department No.HS-1072/40877/C, dated 27.4.1973 and Govt. Resolution, Urban Development and Public Health department No.HS-1072/IC, dated 11.5.1973 i.e. the Screening Committee should scrutinize such cases and only encroachments in conformity with the Development Plan should be regularized and those not regularized should be given alternate plots wherever feasible.”

7. Thus, as per the said Circular dated 21 September 1973, it was for the Appellants-plaintiffs to show existence of Shop No.TG-469-2/2 prior to 11 May 1965. There is no document placed on record to show existence of the said structure prior to 11.05.1965. Though Ms. Chandanani invited my attention to an assessment sheet in respect of the said Shop No.TG-469-2/2, the date mentioned for assessment in the said document is from 01.04.1969 to 30.09.1969. Therefore, the said document cannot be cited to prove that the structure existed prior to 11 May 1965.

8. So far as reliance placed by Ms. Chandanani on the Government Circular dated 25 February 2004 is concerned, the

same was issued for the purpose of deciding eligibility of slum dwellers for rehabilitation. The said circular cannot be cited for the purpose of claiming any protection in respect of the structures which do not fall in slum area. Therefore, reliance of the Appellants-plaintiffs on the Circular dated 25 February 2004 would not assist their case in any manner.

9. Thus, the Appellants-plaintiffs could not *prima facie* prove before the City Civil Court that this structure bearing No.TG-469-2/2 existed prior to datum line 11 May 1965 and City Civil Court cannot faulted for not extending the protection in respect of Shop No.TG-469-2/2.

10. This leaves the last submission made by Ms. Chandanani that the Appellants-plaintiffs would be satisfied if the alternate premises ademeasuring 512 sq.ft. are allotted to the Appellants-plaintiffs. There is some degree of debate between the Appellants-plaintiffs and the Respondent-MCGM about the exact area of Shop No.88. Be that as it may. In the Notice of Motion No. 1861 of 2013, the Appellants-plaintiffs themselves prayed that they be granted same existing area as per the record of Defendant No.1-corporation. In the event the Appellants-plaintiffs want to seek area in addition to

the area which is specified in the record of the Respondent- MCGM, they will be to have adopt the appropriate proceedings for the same. All contentions in that regard are kept open.

11. I, therefore, do not find any reason to interfere in the Order passed by the City Civil Court. Reserving liberty as noted above, the appeal is disposed of accordingly.

12. In view of the disposal of the Appeal from Order, Civil Application No.95 of 2022 does not survive and same is dismissed.

(SANDEEP V. MARNE, J.)