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14ao705-15-CAA860-15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.705 OF 2015

WITH

CIVIL APPLICATION NO.860 OF 2015

Kurla L.I.G. Adarsh Co-op.Hsg. Soc. Ltd. & Ors. ... Appellants

Versus

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

Mr.S.C.Naidu with Mr.Pradeep Kumar i/b. Mr.Dipesh Siroya, for the Appellants

Mr.Saurabh Pakle with Mr.R.Y. Sirsikar, for the Respondent No.1-MCGM

Mr. P. G. Lad with Ms.Sayali Apte with Ms.Shreya Shah, for Respondent No.2-MHADA.

CORAM: G. S. KULKARNI, J.

DATED: JANUARY 11, 2023

PC.

1. Heard Mr.Naidu, learned Counsel for the appellants, Mr.Saurabh Pakle, learned Counsel for the respondent-municipal corporation and Mr.Lad, learned Counsel for MHADA as MHADA

2. This appeal is directed against an order dated 18 March 2015 as passed by the learned Judge, City Civil Court, Bombay, whereby Notice of Motion No.201 of 2014 filed by the appellants/plaintiffs in S.C.Suit No.101 of 2014 has been dismissed.

3. The suit in question was filed by the appellants being aggrieved by the construction being undertaken by the defendant-municipal corporation of constructing a Sulabh Sauchalaya on the pavement outside the wall of the appellants-society. According to the

appellants/plaintiffs, the land indisputedly belonged to the MHADA. The appellants/societies buildings are constructed on the land belonging to MHADA. Mr.Naidu has drawn Court's attention to a letter dated 17 March 2019 of the municipal Corporation- Exhibit 1 (at page 249) annexure to the Civil Application, where the municipal corporation has acknowledged that the MHADA is the owner of the land. At the stage Sulabh Shauchalay was being constructed, the appellants/society moved the City Civil Court, contending that such construction at the behest of the municipal corporation is illegal, as no permission whatsoever of MHADA was obtained, as also the municipal corporation has not adhered to the provisions of law and no plans to undertake such construction were approved, as per the requirements of law. By the impugned order, learned Judge of the City Civil Court, Bombay, being not persuaded by the contentions as urged on behalf of the appellants/society, rejected the notice of motion. This appeal was accordingly filed on 30 March 2015. A co-ordinate Bench of this Court on 30 March 2015 passed an order directing a status quo to be maintained. It is this status quo which has continued to operate till date.

4. It is also required to be noticed that from time to time the parties were heard, detail orders are passed on the present proceedings. There are different issues as considered at the relevant time including the issue of partly constructed premises. Be that as it may, all these issues are not required to be gone into in passing the present order, considering what has transpired before the Court at today's hearing.

5. Mr.Pakle, learned Counsel for the municipal corporation, on instructions, makes a statement that the municipal corporation does not intend to proceed with the construction of any Sulabh Sauchalaya on the suit site, which is also stated in paragraph 8 of the reply affidavit dated 18 October 2022. Thus, the intention of the corporation is not to have any Sulabh Sauchalaya or any construction in that regard on the suit site. The statement of Mr.Pakle is accepted.

6. I have perused the photographs as placed on record on behalf of the municipal corporation as also by the appellants, as also the observations as noted by this Court in previous orders. Now as the corporation has dropped its intention to construct a Sulabh Sauchalaya on the said site, it is appropriate not to delve into issues, as to legality of such part construction, suffice it to observe that such construction ought be removed by the Municipal Corporation. The Municipal Corporation is directed to remove such construction within 30 days from the date a copy of this order is available on the website of this Court, and also remove the debris on the site. It is clarified that in any event if the municipal corporation intends to put up any construction, it shall be undertaken strictly in accordance with law. All contentions of the parties in that regard are expressly kept open.

7. In view of the above position, further adjudication of the proceeding is not called for. The status quo order is accordingly required to be vacated subject to the above observation.

8. In view of the position taken by the Corporation, nothing survives

in the suit. The parties are directed to appear before the trial Court after the said period of 30 days, so that the report of demolition as also the compliance can be placed on record of the suit and the suit itself can also be disposed of by the learned trial Judge.

9. Appeal from order is accordingly disposed of in the above terms.

10. As appeal is disposed of, pending Civil Application would not survive. It is disposed of.

11. No costs.

(G. S. KULKARNI, J)