

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3388 OF 2011

Revji D. Kale & Another.

...Petitioners.

Versus

Municipal Corporation for Greater

Mumbai and Another.

..Respondents.

Mr. Ashok R. Pande and Mr. Shobhit Shukla for the petitioner.

Mr. R. Y. Sirsikar for respondent no. 1.

Ms. Sayali Apte i/b Mr. P. G. Lad for respondent no. 2.

Coram : Sharmila U. Deshmukh, J.

Date : August 7, 2023.

P. C. :

1. The challenge in the petition is to the order dated 15th June 2010 dismissing the notice of motion filed by the petitioners seeking to restore the suit, being L.C. Suit No. 2224 of 2009, and the draft notice of motion and to set aside the order dated 26th October 2009 passed in the draft notice of motion and the order dated 27th November 2009 passed in L.C. Suit No. 2224 of 2009.

2. The facts of the case are that L.C. Suit No. 2224 of 2009 was instituted by the petitioners seeking to challenge a notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1881 in respect of the structures which were

constructed by the petitioners on Plot Nos. 181 and 182 at Andheri. In these proceedings, a notice of motion was taken out by the petitioners seeking stay of the notice which was issued by the Corporation and subsequent action. The trial Court by order dated 26th October 2009 took into consideration an order of this Court dated 17th September 2009 passed in Appeal from Order No 947 of 2009 in different proceedings whereby this Court had disposed of the said appeal from order with certain directions as regards seeking regularisation of the structures in those proceedings and a time-frame in that respect was also given by this Court. The trial Court in the draft notice of motion by order dated 26th October 2009 applied the directions of this Court passed on 17th September 2009 and disposed of the said notice of motion. Subsequently, on 27th November 2009 the suit also came to be disposed of.

3. By notice of motion No.253 of 2010, the petitioners sought relief of restoration of the earlier draft notice of motion and the suit by considering as to whether the directions which were given by this Court vide order dated 17th September 2009 in A.O. No.947 of 2009 were applicable to the suit instituted by the petitioners. The trial Court by order dated 15th June 2010 framed certain issues including the issue as to whether the directions of this Court contained in order

dated 17th September 2009 in A.O. No. 947 of 2009 are applicable to the plaintiff's case. The trial Court decided the issue as regards the authorisation of structures without ascertaining the point framed as to the applicability of the order dated 17th September 2009 passed by this Court in A.O. No. 947 of 2009 and dismissed the notice of motion, giving rise to the present petition.

4. Learned counsel appearing for the petitioner has taken this Court through the pleadings as well as various orders passed and would contend that it is the specific case of plaintiff that the construction in respect of which notice has been issued is an authorised construction. He would further contend that the order passed by this Court dated 17th September 2009 in A.O. No. 947 of 2009 was in respect of some other structures wherein the application for regularisation was made and a time-frame was directed by this Court. He would further submit that the trial Court failed to take into consideration the case set up by the plaintiff of the structure being authorised and failed to consider the in-applicability of the order dated 17th September 2009 passed by this Court in A.O. No. 947 of 2009. He would further submit that along with the notice of motion, the suit also came to be dismissed in the year 2011.

5. *Per contra*, learned counsel appearing for the Respondent-Corporation submits that the directions of this Court contained in order dated 17th September 2009 passed in A.O. No. 947 of 2009 are applicable to the case of plaintiff.

6. Considered the submissions.

7. Without going into the merits of the case, the petition can be disposed of by restoring the suit, being L.C. Suit No. 2224 of 2009, to the file with a direction to decide the same in a time bound manner. It is not in dispute that during the pendency of the present petition, this Court by the order passed in the year 2010, has directed to maintain status quo. Considering that the status quo has been operating since the year 2010, I am not inclined to go into merits of the impugned order to determine as to whether the directions of this Court contained in the order dated 17th September 2009 in A.O. No. 947 of 2009 are applicable to the case of plaintiff. As it is the contention of plaintiff that their structures are authorised structures and there is no need to seek regularisation, I am of the view that it would be in the interest of justice if the suit, being L.C. Suit No. 2224 of 2009, is restored to the file and the matter is decided on merits.

8. Considering that the suit is of the year 2009, the trial Court is

requested to decide the same as expeditiously as possible and in any event within a period of six months from today. As the order of status quo has been operating in favour of the petitioner since 2010, the same is continued for a further period of six months from today.

9. Writ petition stands disposed of in above terms.

[Sharmila U. Deshmukh, J.]