

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 465 OF 2022
ALONGWITH
INTERIM APPLICATION NO. 3029 OF 2022

Lata Koli

...Appellant

V/s.

Municipal Corporation of
Greater Mumbai

...Respondent

Mr. Ashok M. Saraogi, for the Appellant.

Mrs. Smita Tondwalkar, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 11 October 2023.

P.C. :

1. **Admit.** By consent of the parties, the Appeal is taken up for hearing forthwith.

2. The challenge in the Appeal is to the order dated 18 April 2022 passed by the City Civil Court rejecting Notice of Motion No. 1379/2022 filed by the Appellant-plaintiff to seek an order of temporary injunction.

3. The Appellant-Plaintiff has instituted L.C. Suit No. 2572/2021 before the City Civil Court challenging notice dated 20 December 2021 issued under the provisions of Section 354A of the Mumbai Municipal Corporation Act, 1888. She is also challenging the Speaking Order dated 26 March 2022. The Notice of Motion seeking temporary injunction to restrain the Municipal Corporation from taking action in respect of the suit structure has been rejected by the City Civil Court by impugned order dated 18 April 2022.

4. It appears that the Municipal Corporation has issued the impugned notice under an assumption that the Appellant-Plaintiff occupies only the structure numbered as 48-BA in which business of Suryavanshi Oil Depot is being conducted. The Municipal Corporation has alleged that between the original structure '48BA-Suryavanshi Oil Depot' and the adjoining electric pole, the Appellant-Plaintiff has committed an encroachment by constructing an extension of area admeasuring about 17.85 sq.mtrs. Therefore the impugned notice dated 20 December 2021 was issued.

5. During the course of hearing of this Appeal, after noticing confusion about the exact location of the suit structure, this Court directed the Assistant Engineer of the Municipal Corporation to conduct a site inspection and submit a report. This Court passed the following order on 5 December 2022 :

1. The Appellant herein, who is the original Plaintiff, has assailed order dated 18/04/2022 whereby the learned Judge, City Civil Court, Greater Bombay has rejected the Notice of Motion No.1379 of 2022 seeking to restrain the Respondent-Corporation from implementing the notice dated 20/12/2021 and order passed thereon under Section 354 A of the Mumbai Municipal Corporation Act, 1888 and from taking any action in respect of the suit premises No.48-BA situated at Koliwada, Mumbai.
2. The Corporation had issued notice under Section 354 A of the MMC Act alleging that the Appellant had commenced unlawful construction in between structure 48-BA Suryavansi Oil Depot and Electric Pole No.WK 24/1, Shriram Gully, Worli Koliwada, Worli, Mumbai.
3. The case of the Plaintiff is that she is the owner in possession of the structure No.48 BA, which is 36.85 sq.meters. Mr. Saraogi, learned counsel for the Plaintiff submits that assessment order dated 01/04/1991 shows the area of the structure under 48-BA as 36.85 m². He submits that the Plaintiff has neither extended the structure bearing No.48-BA nor carried out construction between the existing structure and the electric pole and that this fact can be verified at Loco.
4. Hence, with consent, Assistant Engineer, Building and Factory, G-South Ward is appointed as a Commissioner, who shall visit the site at Shriram Gully, Worli, Mumbai, in the presence of the Plaintiff and representative of the Respondent and ascertain the area of the structure No.48-BA and report whether the Appellant -Plaintiff has constructed any structure between 48-BA Suryavansi Oil Depot and Electric Pole No.WK 24/1, Shriram Gully, Worli Koliwada, Worli, Mumbai.

5. Stand over to **19/12/2022**. Both parties to maintain status-quo in respect of the subject property till the next date of hearing.

6. In pursuance of the order passed by this Court on 5 December 2022, the Assistant Engineer (Building & Factory), G/South Ward has conducted the site visit and submitted inspection report which reads thus :

INSPECTION REPORT

Sub:- Inspection of structure 48-BA and structure between Suryavanshi Oil Depot & Electric Pole WK-24/1 Shriram Gully, Worli Koliwada, Worli, Mumbai.

Ref: (1) Appeal from Order No. 465 of 2022.

With

Interim Application No. 3029 of 2022

In

Appeal from Order no. 465 of 2022

Smt. Lata Vilas Koli
V/s.

....Appellant

M. C. G. M.

...Respondent

(2) Order passed by Hon'ble Court dt. 05/12/2022.

With reference to the order passed by Hon'ble Court dt. 05/12/2022, the site under reference i.e. Structure between Suryavanshi Oil Depot & Electric Pole WK- 24/1 Shriram Gully, Worli Koliwada, Worli, Mumbai was inspected by Assistant Engineer (Building & Factory) G/South Ward, Sub Engineer (Building & Factory) G/South Ward & Representative of Plaintiff. The following observations were made during the inspection:

1. There exists a Ground + 1 floor structure known as Suryavanshi Oil Depot i.e. 48-BA.

2. In Structure 48-BA Suryavanshi Oil Depot at Ground Floor having area adm. 5.95m X 3.0m 17.85sq.mt.
3. In Structure 48-BA Room on the 1st floor having area adm. 5.95m X 3.0m = 17.85 sq.mt.
4. Plaintiff has constructed one structure between 48-BA Suryavanshi Oil Depot and Electric Pole WK-24/1 having area adm. 6.30m x 2.60m = 16.38sq.mt. having height 3.0m using B. M. Wall covered with M. S. Angles and ladi coba slab and 1.0m width R.C.C. staircase.

As per the orders of Hon'ble Court the site is inspected and factual report with the area of the structure along with the photographs are submitted herewith for producing the same before Hon'ble Court.

Assistant Engineer (Bldg. & Fact)
G/South Ward.

7. As per the inspection report, there is a ground plus first floor structure known as 'Suryavanshi Oil Depot' which is numbered as 48-BA. That total area of the structure bearing No.48BA is 17.85 sq.mtrs. The area in which alleged unauthorised construction was being carried out admeasures 16.38 sq.mtrs. Thus the total area of the structure numbered as 48-BA as well as the alleged unauthorised construction admeasures roughly around 34.18 sq.mtrs.

8. Mr. Saraogi, learned counsel appearing for the Appellant would invite my attention to the assessment sheet prepared in pursuance of special notice dated 28 March 2007 in which the total area of ground floor structure bearing number 48-BA is shown as

36.85 sq.mtrs. The said assessment sheet was apparently prepared for the purpose of revising the assessment by dividing the structure into commercial and residential portions. The assessment sheet shows that the ground floor structure was divided by construction of B.M. Wall and the front portion was being used as Kirana Shop and the remaining part admeasuring 16.85 sq. mtrs was being used for residential purpose. It was also found that the owner had added first floor to the structure. It appears that on account of use of the front portion of the structure as Kirana Shop, the Municipal Corporation revised the assessment from the years 2005-06.

9. The assessment sheet prepared in pursuance of the special notice dated 28 March 2007 would indicate that the total area of the ground floor numbered as 48-BA was 36.85 sq.mtrs and the same was sub-divided into a shop and residential portion. The total area of ground floor found during inspection (including the alleged unauthorised construction) is found to be approximately about 34.18 sq.mtrs.

10. *Prima-facie*, therefore it is difficult to hold that the Appellant-Plaintiff has committed any encroachment on the adjoining portion of the land. The City Civil Court has proceeded to reject the Notice of Motion by recording a finding that the Appellant-Plaintiff has committed encroachment on the adjoining portion of land. This finding appears to be erroneous.

11. I therefore find that the Appellant-Plaintiff has made out a *prima-facie* case for grant of protection till final disposal of the suit.

12. Appeal accordingly succeeds. The order dated 18 April 2022 passed by the City Civil Court is set aside and Notice of Motion No. 1379/2022 is made absolute in terms of prayer clause (a) of the Notice of Motion. With the above directions, the Appeal is **disposed of**.

13. With disposal of the Appeal, Interim Application No. 3029/2022 filed for injunction does not survive. The same is disposed of as having become infructuous.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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