

2020. Mr. Sawant, in turn, had acquired the suit premises from Mr. Vinayak Shankar Sawant, the erstwhile holder, under an Instrument executed on 11 January 2020. The use, occupation and possession of the suit premises by the Plaintiff and his predecessor in title is evidenced by voluminous documents like ration card, electricity bill, orders passed by the Deputy Collector (ENC), registration certificate issued under the Bombay Shops and Establishments Act, 1948 and other regulatory provisions.

3.2 According to the Plaintiff, the suit premises is also a protected structure under Section 3Y of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 and therefore, the Slum Rehabilitation Authority is the appropriate planning authority.

3.3 The Plaintiff asserts, the Defendant No.1 Corporation on the basis of a false complaint issued notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 sans any authority. It was falsely alleged that the Plaintiff has carried out unauthorized vertical extension to the ground floor structure. Initially, a Speaking Order was passed without providing an effective opportunity of hearing. Thereupon, having learnt that the action for demolition was being taken post haste, the Plaintiff gave a suitable reply along with the supporting documents. However, by a speaking order dated 20 March 2023, the Designated Officer directed the Plaintiff to remove the notice structure, without applying his mind to the voluminous record. Hence, the

Plaintiff was constrained to institute the suit.

3.4 In the suit, the Plaintiff took out a Notice of Motion for interim reliefs. By the impugned order dated 15 April 2023, the learned Judge, City Civil Court, declined to grant ad-interim relief. The learned Judge repelled the challenge to the authority of Defendant Corporation on holding that under sub-Section (3) of Section 47 of the Act, 1971, Defendant No.1 Corporation was empowered to take action till the order for demolition of the building was made under the Act, 1971. It was further observed that the Plaintiff failed to establish that the notice structure was either authorized or tolerated.

3.5 Being aggrieved, the Plaintiff is in appeal.

4. I have heard Mr. Pratap Singh, learned Counsel for the Appellant and Mrs. Tondwalkar, learned Counsel for the Respondents at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. Mr. Singh, learned Counsel for the Appellant would urge that the suit premises is a protected structure. Strong reliance was placed on the order dated 15 April 1994 passed by the Deputy Collector declaring the suit premises as a protected structure. Attention of the Court was also invited to the survey receipt dated 21 July 2000 issued in favour of the predecessor in title of the Plaintiff. Taking the court through other documents, evidencing the occupation and possession of the

predecessor in title of the Plaintiff in the suit premises, it was urged that the suit premises deserves protection till the matter is adjudicated. The learned Judge, according to Mr. Singh, was not justified in non-suiting the Plaintiff at an ad-interim stage.

6. In contrast, Mrs. Tondwalkar, learned Counsel for the Respondents, would urge that the documents pressed into service on behalf of the Appellant-Plaintiff do not indicate that the notice structure is either authorized or tolerated. Laying emphasis on the nature of the unauthorized development, namely, the unauthorized extension to the ground floor structure, Mrs. Tondwalkar would urge that the said development, being wholly unauthorized and illegal, deserves no protection.

7. The nature of alleged unauthorized development assumes significance. The legality and validity of an action under Section 351 of the Act, 1888 is required to be tested in the light of the nature of the alleged unauthorized development. In the case at hand, there is not much controversy over the fact that there has been vertical extension at the suit premises. The controversy between the parties essentially revolves around the question as to whether the said vertical extension is either tolerated or otherwise protected by the provisions contained in the Act, 1971.

8. It is the positive case of the Plaintiff that the suit premises, consisting of ground, mezzanine and first floor, has been in existence since prior to 1980. The

Plaintiff claimed to have purchased the said property under an Agreement for Sale dated 9 October 2020, purportedly in the same state as it exists today. The learned Judge was, however, of the view that the documents on record bear out the existence of a single storied structure admeasuring 15 x 8 sq.ft. and do not refer to the vertical extension thereof.

9. The aforesaid finding, albeit, prima facie, appears to be justifiable. In the order dated 15 April 1994, on which strong reliance was placed by Mr. Singh, the description of the protected structure has been shown as a residential structure admeasuring 15 x 8 sq.ft. It does not refer to mezzanine or 1st floor. It is imperative to note that even the Agreement for Sale under which the Plaintiff claimed to have acquired the suit premises from Mr Vinod Sawant, describes the property as Room No.10, 276B. The existence of a mezzanine and 1st floor is conspicuous by its absence in the said agreement. Likewise, the Instrument executed by Mr. Vinayak Sawant in favour of Vinod Sawant, the predecessor in title of the Plaintiff, also contains an identical description. Thus, prima facie, the Plaintiff failed to establish that the suit premises comprises mezzanine and 1st floor as well since prior to 1980.

10. The learned Judge, in my view, was well within his rights in repelling the challenge to the authority of the Defendants to initiate action based on the provisions contained in Section 47 of the Act, 1971. First and foremost, it is pertinent to note that the Plaintiff did not bank upon any photopass issued under Section 3Y of the

Act, 1971. Even if the case of the Plaintiff is construed rather generously, the claim for protection of the structure under the provisions of the Act, 1971, at best, would extend to the single storied structure, which is described in the order dated 15 April 1994. Such protection would not insulate the Plaintiff from action for unauthorized development beyond the area covered by the photopass. Protection under the Act, 1971, even when it is unquestionably available, cannot be used as a shield for unauthorized development.

11. A useful reference in this context can be made to the judgment of the Division Bench of this Court in **High Court on its own Motion (In the matter of Jilani Building at Bhiwandi V/s. Bhiwandi Nizampur Municipal Corporation and Ors.**¹ wherein it was held that it is difficult to conceive that merely because an area is declared to be a slum under Section 4, the planning authority would lose its control and authority to regulate the structure by implementing the provisions of the MMC Act and the MRTP Act in the event the structures are dilapidated and/or in any manner unauthorized. It was further held in clear and explicit terms that the MCGM has all the power and authority to take action against any structure beyond photopass structure found to be unauthorized which is situated in slum.

12. In the aforesaid view of the matter, the learned Judge, City Civil Court was justified in arriving at a conclusion that the notice structure was neither

1 PIL No.1 of 2020 dt. 26 Feb. 2022

authorized nor tolerated. In the totality of the circumstances, it does not appear that the learned Judge, City Civil Court committed any error in declining to exercise discretion to grant ad-interim relief. Resultantly, no interference is warranted in exercise of appellate jurisdiction which is circumscribed.

13. Hence, the following order :

ORDER

(i) The Appeal stands dismissed.

(ii) In view of the dismissal of the Appeal, the Interim Application does not survive and the same also stands dismissed.

(N.J.JAMADAR, J.)