



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.12 OF 2022
WITH
CIVIL APPLICATION NO.2 OF 2022
WITH
INTERIM APPLICATION NO.13518 OF 2023

Municipal Corporation of Greater
Mumbai And Ors.

... Appellants

Versus

Mr. Sayed Momin Hussain
And Anr.

... Respondents

* * *

Mr. Dharmesh Vyas a/w Ms. Smita Tondwalkar for the Appellant.

Mr. Ramesh Ramamurthy a/w Saikumar Ramamurthy, Kavita
Anchan, Seema Sorte and Karthik Pillai for the Respondents.

* * *

CORAM : SANDEEP V. MARNE, J.

DATE : 15 SEPTEMBER 2023

P.C.

. By this Appeal, the Appellant-Municipal Corporation has
challenged the Order dated 6 June 2019 passed by the City Civil
Court, by which, the Respondent-plaintiff's Notice of Motion No.573
of 2019 is made absolute in terms of the prayer clauses (a) and (b).

Prayer clauses (a) and (b) read as under :

- (a) that this Hon'ble Court be pleased to direct the
Defendant No.1 and / or Respondents to reconstruct

the suit premises being stall admeasuring 12.50 x 10.50 sq.ft. situated beside the Season's Showroom, Kanubhai Desai Road, Santacruz (West), Mumbai-400 054 illegally demolished on 24 January 2019 by the Respondents.

On the alternate

- (b) that this Hon'ble Court be pleased to permit the Plaintiff to reconstruct the suit premises being stall admeasuring 12.50 x 10.50 sq.ft. at beside the Season's Showroom, Kanubhai Desai Road, Santacruz (West), Mumbai-400 054 which has been illegally demolished on 24th January 2019 by the Respondents and the entire cost so incurred in reconstruction of the suit shall at the location as set out in Commissioner's Report dated 29 January 2019 be recovered from the Respondents."

2. It appears that the Appellant-Municipal Corporation issued a Notice dated 11 August 2017 intimating the Respondent-plaintiff that the ground rent of the stall was canceled and removal action in respect of the suit stall would be undertaken without further intimation. The Respondent-plaintiff filed L.C. Suit No.2321 of 2017 challenging the Notice dated 11 August 2017. In his Suit, the Respondent-plaintiff also filed Notice of Motion No.2669 of 2017, in which the City Civil Court passed the Order dated 12 August 2017 and granted ad-inetrim relief restraining the Appellant-Municipal

Corporation from taking any action on the basis of the Notice dated 11 August 2017.

3. It is the case of the Appellant-Municipal Corporation that since the land at which the suit stall is located was urgently required for carrying out the repair work of storm water line, the Respondent-plaintiff was temporarily permitted to erect the stall at an alternative spot and after offering him such an alternative spot, the suit stall was removed. The Respondent-plaintiff, however, contested this position and filed Notice of Motion No.573 of 2019, complaining that the suit stall was demolished in violation of the Order dated 12 August 2017. In this factual background, the City Civil Court passed the Order dated 6 June 2019 allowing the Notice of Motion No.573 of 2019.

4. I have heard Mr. Vyas, learned Counsel appearing for the Appellant-Municipal Corporation and Mr. Ramamurthy, learned Counsel appearing for the Respondent-plaintiff.

5. Prayer clause (b) of Notice of Motion No.573 of 2019 sought permission for reconstruction of the stall by Respondent-plaintiff. Thought the City Civil Court has also granted prayer clause (a) in

the Notice of Motion which contains a direction to the Appellant-Municipal Corporation to reconstruct the stall, Mr. Ramamurthy, learned Counsel would fairly submit that the Respondent-plaintiff will reconstruct the stall at his own expenses at the same place where the suit stall was originally located and to that extent, prayer clause (a) granted by the City Civil court by the impugned Order dated 6 June 2019, can be set aside. Mr. Vyas, learned Counsel appearing for the Appellant-Municipal Corporation is agreeable to this arrangement after taking instructions from Officer of the Municipal Corporation of Greater Mumbai.

6. Accordingly, the Appeal is disposed of with the following directions :

- (i) Impugned Order dated 6 June 2019 passed by the City Civil Court in Notice of Motion No.573 of 2019 is modified to the extent that the Respondent-plaintiff is permitted to reconstruct the suit stall of same size and at the same location and shall be permitted to occupy the same till the decision of Notice of Motion No.2669 of 2017. While doing so, the Respondent-plaintiff

shall neither exceed the original area of the stall nor change the location where it was originally located.

(ii) The City Civil Court shall proceed to decide Notice No.2669 of 2017 on its own merits as expeditiously as possible without being influenced by any manner either by Order dated 12 August 2017 or 6 June 2019 or even by the present Order.

(iii) Mr. Ramamurthy, learned Counsel appearing for the Respondent-plaintiff makes a statement that Notice of Motion No.572 of 2019 filed by the Respondent-plaintiff shall be withdrawn before the City Civil Court.

7. With the above directions, the Appeal is disposed of. All the Interim Application/Civil Application pending do not survive and are also disposed of.

(SANDEEP V. MARNE, J.)