

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO 849 OF 2019
WITH
CIVIL APPLICATION NO. 1011 OF 2019

Green Twig Estate Management
Private Limited

..Appellant

V/s.

M/s. Amit Engineering Company
and Ors.

...Respondents

Mr. Mayur Khandeparkar a/w. Mr. Vikramjit Garewal, Mr. Umesh Tawari, Rhythm Rathod i/by. Ms. Trishla Yelve, for the Appellant.

Mr. K.D. Jha a/w Mr. Anukul Seth, for Respondent No.1.

Ms. Smita Tondwalkar, for Respondent No.2-B.M.C.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 13 December 2023.

Pron. On : 19 December 2023.

JUDGMENT :

1. This Appeal is filed challenging the order dated 1 July 2019 passed by the learned Judge of the City Civil Court, Mumbai,

allowing Notice of Motion No. 80 of 2019 filed by Respondent No.1/Plaintiff granting temporary injunction by restraining the Municipal Corporation from acting on the Notice dated 20 July 2013 issued under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1888 (**MMC Act**).

2. Appellant-Defendant No.1 is the landlord in respect of Building Nos. 1227, 1228(1) and 1226 situated at Street Nos.35, 35A and 37, Ambalal Doshi Marg (Hamam Street), Fort, Mumbai-400 023. The Appellant claims to have acquired the buildings by way of registered Deed of Conveyance dated 21 June 2011.

3. Plaintiff/Respondent No.1 acquired tenancy rights in respect of a shop located on the ground floor of the building 'Kirti Chambers' at 37, Ground Floor, Ambalal Doshi Marg (Hamam Street), Fort, Mumbai 23. It is Plaintiff's case that since acquisition of the tenancy rights, there exists a loft/mezzanine floor consisting of two wooden cabins having an access through internal wooden staircase within the shop premises. The shop premises were subsequently numbered as Shop No.3 by erstwhile landlord, M/s. Sahib Enterprises. After acquisition of the ownership rights in respect of the buildings, the shop premises are renumbered as Shop No.1. Plaintiff carries on business in the name and style as 'M/s. Amit Engineering Company' and deals with the import and export business. It is Plaintiff's case that the landlord/Appellant intends to redevelop the building and has acquired possession of substantial

portion of the building. It is plaintiff's case that the Appellant is making efforts for eviction of the Plaintiff from the suit shop and has instituted L.C. Suit No. 233 of 2013 in the City Civil Court seeking mandatory direction against the Municipal Corporation for removal of loft/mezzanine floor. Plaintiff avers that the Appellant-landlord is misusing the machinery of the Municipal Corporation for pressurizing the tenants. That at the behest of the Appellant-landlord, the Municipal Corporation issued Notice dated 20 July 2013 under the provisions of Section 351 of the MMC Act alleging unauthorised construction of mezzanine floor admeasuring 2.85 mtrs x 6.20 mtrs. having height of 1.70 mtrs. above and 1.85 mtrs. below the mezzanine floor, including wooden partition cabins above the mezzanine floor. The Notice was replied by the Plaintiff which led to passing of Order dated 16 August 2013 by the Municipal Corporation rejecting the reply and calling upon the Plaintiff to remove the unauthorized construction of mezzanine floor and cabins. The Plaintiff filed Writ Petition No. 2573 of 2013 before this Court challenging the Notice dated 20 July 2013, in which order of status-quo was passed on 23 August 2013. The petition came to be disposed of by order dated 6 December 2018, granting liberty to the plaintiff to file a civil suit challenging the notice. Plaintiff accordingly instituted Long Cause Suit No. 3329 of 2018 before the City Civil Court challenging the Notice dated 20 July 2013. The Petitioner also filed Notice of Motion No. 80 of 2019 in the suit seeking temporary injunction. The status-quo order granted by this Court in Writ Petition No. 2573 of 2013 continued to operate during the decision

of the Motion. By order dated 1 July 2019, the City Civil Court has allowed Notice of Motion No. 80 of 2019 and has restrained the Defendant/Municipal Corporation from acting on the Notice dated 20 July 2013 till disposal of the suit. Appellant-landlord is aggrieved by the Order passed by the City Civil Court on 1 July 2013 and has filed present Appeal.

4. Mr. Khandeparker, the learned counsel appearing for the Appellant would submit that the City Civil Court has erred in granting an order of temporary injunction in favour of the plaintiff as erection of mezzanine floor and cabins is admittedly in violation of the Development Control Regulations as well as the policy of the Municipal Corporation. He would submit that the suit structure cannot be regularized either as mezzanine floor or as a loft. He would take me through the guidelines issued by the Municipal Corporation vide Circular dated 8 August 2005 to demonstrate that the suit structure cannot be regularised as mezzanine floor as the clear height of the shop is less than 4.20 metres. Furthermore, the headroom in the mezzanine floor under the guidelines is required as 2.2 meters, whereas the headroom below the mezzanine floor of the notice structure is 1.85 meters. According to him the structure also violates the maximum permissible limit of floor area mezzanine floor, which in the present case clearly exceeds 1/3 of the total floor area. Mr. Khandeparkar would then take me through the guidelines for regularization of the loft and would submit that the suit structure cannot be regularized even as loft as the height of the loft above its

floor level exceeds 1.52 mts (which is 1.70 mtrs. in in the present case). He would further submit that under the guidelines, loft cannot be used for any other purposes except for storage of goods, whereas in the present case two cabins are constructed in the notice structure. Mr. Khandeparker would further submit that in any event the suit structure cannot be regularized under the policy dated 8 August 2005 in absence of consent of the landlord. That the Appellants are not willing to give their consent for regularization of the notice structure. He would therefore submit that when the structure is incapable of being regularized, the City Civil Court has erred in holding that the Plaintiff has right to seek regularization of the structure. He would pray for setting aside the order of injunction passed by the City Civil Court.

5. *Per-Contra*, Mr. Jha the learned counsel appearing for the Plaintiff/Respondent No.1 - Board, opposes the Appeal and supports the Order passed by the City Civil Court. He would submit that the protection in respect of the notice structure is existing for the last 10 long years and there is no reason why this Court should vacate the same at such a distant point of time. He would urge that this Court may instead direct decision of the suit rather than disturbing the order of injunction which has been operating for last over a decade. He would submit that the Municipal Corporation has framed Policy dated 8 August 2005 specially for protecting the mezzanine floors and lofts in respect of authorized structures and Plaintiff must be given an opportunity to apply for regularization of the notice

structure and the same cannot be demolished by misusing the machinery of the Municipal Corporation. That the impugned notice is issued at the behest of the landlord to assist him in ensuring eviction of the Plaintiff in an indirect manner. That the notice structure is regularizable as per the Policy dated 8 August 2005. He would urge this Court to issue necessary directives either to the Appellant to give his consent or to the Municipal Corporation to process the regularization application without the consent of the Appellant- landlord. He would pray for dismissal of the Appeal.

6. I have heard Ms. Tondwalkar, learned counsel appearing for the Respondent-Municipal Corporation, who would support the Notice dated 20 July 2013 issued by the Municipal Corporation.

7. Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the City Civil Court has passed an order of temporary injunction restraining the Municipal Corporation from acting on the Notice dated 20 July 2013. The notice structure stands protected on account of order of status-quo initially granted by this Court and later on account of order of temporary injunction granted by the City Civil Court. The notice structure stands protected for over a decade. The issue is whether it would be prudent to disturb the same at such a distant point of time.

8. Mr. Khandeparkar has strenuously submitted that since the notice structure is ex-facie illegal and not capable of being regularized, the interim injunction granted by the City Civil Court must be vacated. True it is that the relief of temporary injunction should be in the aid of final relief, which can be granted in favor of a party. It is Mr. Khandeparkar's contention that since the Plaintiff is not likely to succeed in the suit, the temporary injunction would not be in the aid of final relief grantable in Plaintiff's favor. For this purpose, Mr. Khandeparkar has taken me through various clauses of the Policy Circular dated 8 August 2005 to demonstrate that the notice structure is incapable of being regularized.

9. Perusal of the Circular dated 8 August 2005 indicates that the Municipal Corporation resolved on 14 August 1997 vide Resolution No.853 for regularizing the unauthorized mezzanine floors/lofts constructed prior to 15 August 1997 in the existing authorized buildings. The State Government, however, did not grant its concurrence to the resolution of the Municipal Corporation and instead suggested that the Municipal Corporation should undertake modification of the Development Control Regulations, 1991 (**DCR 1991**) for exempting the area of mezzanine floors constructed up to 15th August 1997 from FSI computation. Accordingly, a modification proposal was forwarded by the Municipal Corporation to the State Government under the provisions of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 for sanction of the State Government. The State Government approved the said

Modification vide Notification dated 31 May 2005 and Regulation 38(6)(i) of the DCR 1991, came to be modified with effect from 31 May 2005 as under.

Requirements of parts of buildings-

(6) Mezzanine Floor- (i) Size:-The aggregate area of mezzanine floor in any room shall not exceed 50% of the built up area of that room. The size of mezzanine floor shall not be less than 9.5 sq. mt. if it is used as a living room. The area of the mezzanine floor shall be counted towards FSI. Provided, however, that in existing authorized buildings having no balance FSI, area of the mezzanine floors constructed prior to 15th August, 1997 without approval may be exempted from FSI with special permission of the Commissioner subject to the terms and conditions and payment of premium as may be specified by the Commissioner.

NOTE:- Lofts having head room more than 1.5mt. above, it shall be treated as mezzanine floor.

10. Thus the modified DCR 38(6)(i) permitted exemption of mezzanine floors constructed prior to 15 August 1997 from FSI computation subject to special permission of the Municipal Commissioner and upon payment of premium as specified by him. To bring into effect the provision of DCR 38(6)(i) authorising the Municipal Commissioner to grant such permission and for determination of amount of payment of premium, the Municipal Corporation formulated Policy vide Circular dated 8 August 2005 for regularization of mezzanine flats and lofts constructed prior to 15 August 1997 in existing authorized buildings.

11. The policy envisages that mezzanine floors and lofts existing prior to post April 1962 in non-residential structures and

prior to 17 April 1964 in residential structures would be treated as tolerated. Thus no permission was needed for regularization of mezzanine floats and lofts existing prior to 1 April 1962/17 April 1964. So far as mezzanine floors and loft constructed prior to 15 August 1997 are concerned, the policy provides for their regularization, subject to fulfilment of the prescribed guidelines and conditions. Separate guidelines and conditions are prescribed for regularization of mezzanine floors and regularization of lofts. It would be necessary to reproduce some of the relevant guidelines for regularization of mezzanine floors and lofts :

(a). RULES (GUIDELINES) FOR REGULARISATION OF MEZZANINE FLOORS :

- (i) The clear height of the room in which the mezzanine floor is constructed shall not be less than 4.20 mts.
- ii) Head room under the mezzanine floor shall not be less than 2.2 mt
- iii) Height of the mezzanine floor above, its floor level shall not be less than 1.52 mts.
- iv) The mezzanine floor shall not be permitted in an attic room and no such mezzanine floor constructed in an attic floor shall be regularised.
- v) The floor area of the mezzanine floor shall not exceed 1/3rd of the total floor area of the room if the width of such room is less than 3.0 mt. and the floor area of mezzanine floor shall not exceed half the total area of the room if the width of the room is more than 3 mts.
- vi) A certificate from registered Structural Engineer regarding structural stability of the existing building and the mezzanine floor should be invariably obtained.
- vii) There should be adequate light and ventilation for such mezzanine floor.

viii) A mezzanine floor shall be atleast 1.80 mts away from the front wall of the room having main entrance to the room.

ix) The existing mezzanine floors which do not fulfill the above guidelines shall be brought in conformity with the same before regularisation.

x) In cases where F.S.I is not available in existing authorized bldg, area of the mezzanine floors constructed prior to 15th August, 1997 without approval may be exempted from FSI with special permission of the Commissioner subject to the terms and conditions and payment of premium as may be specified by the Commissioner as per modified Regulation No.38(6)(i) amended on 31st May, 2005, Such mezzanine floors shall be regu by charging premium as given below:

Premium Built-up area.of mezzanine floor X premium rate.

Premium rates shall be taken as approved by M.C. from time to time and as circulated by Development Plan Department.

xi) Where F.S.I. is in balance, regularisation may be done by computing the built- up/of mezzanine floors In F.S.I and further subject to recovery of 15% of full premium to be worked out as per (III)(a)(x) above.

xii). The requirement of C.F.0. shall be complied with.

xiii) The size of mezzanine floor shall not be less than 9.5 sq.mt. if it is used as a living room.

RULES (GUIDELINES) FOR REGULARISATION OF LOFTS :

i) The head room under the loft shall not be less than 2.2 mts.

ii) The height of the loft above its floor level shall not exceed 1.52 mts. Beyond this height, the loft will be considered as mezzanine floor.

iii) The floor area of the loft shall not exceed 1/3rd of the total floor area of the room If the width of the room is less than 3 mts and if the width of the room is 3 mts. or more, the said area of the loft shall not exceed half the total floor area of the room.

iv) A certificate from registered Structural Engineer regarding the structural stability of the existing building and the loft shall be invariably obtained.

v) The loft shall not be used for any other purpose except for storage of goods which are non-hazardous and non-flammable and subject to compliance of requirements of C.F.O.

vi) A loft shall be 1.80 mtrs, away from the front wall of the room.

vii) The existing lofts which do not fulfill the above guidelines shall be brought in conformity with the same before regularisation.

viii) Subject to fulfillment of the aforesaid conditions, a loft may be regularised by levying composition charges as given below:-

Composition charges Area of the loft X 10% of the premium rate.

Premium rate to be considered for this purpose shall be as given under Condition (111)(a)(x) above.

12. Mr. Khandeparkar has strenuously attempted to demonstrate that the notice structure cannot be regularized either as mezzanine floor or as loft. However clause-(vii) above provides that the existing mezzanine floors which do not fulfil the guidelines shall be brought in conformity with the same before regularization. Thus the Policy does envisage regularization of only those mezzanine floors which conformed to the guidelines, but it also allowed necessary changes to be effected in the existing mezzanine floors so as to bring them in conformity with the conditions of the guidelines. Another important provision in the guidelines is in Clause VII, which provides that in case of demonstrable hardship, any of the prescribed conditions can be relaxed with specific sanction of the Municipal Commissioner.

13. There is no doubt to the position that the notice structure has been in existence prior to 15 August 1997. Reference in this regard can be made to Municipal Corporation's letter dated 20 April 1990 issued for the purpose of seeking rent details for assessment purposes in respect of the shop premises. The said letter clearly notices existence of loft inside the shop. In that view of the matter, I do not find any patent error being committed by the City Civil Court in *prima-facie* holding that plaintiff has rightly to apply for regularization under the Circular dated 8 August 2005. Whether the Municipal Corporation will allow regularization or not, is something which cannot be foreseen as of now. There also appears to be impediment in the form of consent of landlord in filing application for regularization. Whether regularization of mezzanine floors and lofts existing in the tenanted structures would depend on whims and caprices of a landlord is something which the City Civil Court will decide at the time of final disposal of the suit. The Court will decide whether a mezzanine floor or loft which is otherwise regularizable under the guidelines, should be demolished if the landlord refuses consent for filing regularisation application. As of now, I do not find it appropriate to disturb the interim protection existing in favor of the plaintiff for over a decade. Even the temporary injunction granted by the City Civil Court is operating since 1 July 2019, i.e. for last more than four years. In such circumstances, it would be prudent for the parties to go for trial of the suit rather than disturbing the temporary injunction at this stage.

14. I therefore do not find any valid reason to interfere in the order of temporary injunction passed by the City Civil Court. Appeal, being devoid of merits, is dismissed without any orders as to costs.

15. With dismissal of the Appeal, the Civil Application pending therein does not survive. The same also stands disposed of.

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SANDEEP V. MARNE, J.