

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.668 OF 2023
WITH
INTERIM APPLICATION NO.14588 OF 2023
IN
APPEAL FROM ORDER NO.668 OF 2023

Ajay Vedu Ayare
Aged about 43 years, Occ: Business,
Indian Inhabitant of Mumbai, having
address at structure bearing census
No. RXC-12-1/2, C.T.S NO. 162,
S. No.25, Hissa No. 2 of Village Akurli,
Taluka Borivali, situated at
Near Sarthi Bar, Western Express
Highway. Kandivali (East), Mumbai-400101.Appellant/Applicant

Versus

THE MUNICIPAL CORPORATION OF
GREATER MUMBAI
(A BODY CORPORATE) Incorporated
under the provisions of MMC Act,
Having its Head Office at Mahapalika
Bhavan, Mahapalika Marg,
Fort Mumbai - 400 001.Respondent

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Mr. Pradeep J. Thorat a/w Mr. Umesh R. Vishwakarma i/b Mr. Ashutosh L.
Shukla for the Appellant/Applicant.
Ms. Smita Tondwalkar for Respondent-MCGM.

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CORAM: SANDEEP V. MARNE, J.
DATE : AUGUST 25, 2023.

JUDGEMENT:

. By this Appeal, Appellant-Plaintiff challenges order dated 17 August 2023 passed by the City Civil Court, Mumbai, rejecting Notice of Motion No.2824 of 2023. The Notice of Motion was filed by Appellant-Plaintiff seeking temporary injunction to restrain the Respondent-Municipal Corporation from acting on notice dated 8 May 2023 issued under the provisions of section 351 of the Mumbai Municipal Corporation Act, 1888 (**the Act**) and speaking order dated 25 July 2023.

2 It is Appellant-Plaintiff's case that he is in possession of structure bearing census No.RXC-12-1/2 having a mezzanine floor admeasuring 900 square feet. Appellant-Plaintiff claims to have purchased the suit structure vide Deed dated 21 November 2000.

3 Respondent-Municipal Corporation issued notice dated 8 May 2023 to the Appellant-Plaintiff under the provisions of section 351 (1A) of the Act of 1888 alleging unauthorized construction of following nature:

SCHEDULE

Construction of unauthorized structure comprising of Ground + 1st Floor with brick masonry walls, Ladi Coba slab at Ground Floor & AC Sheets Roof at 1st Floor admeasuring 11.6 m x 8.6 m at Owner/Occupier Ajay Vedu Ayare/Prashant Shetty, Sarvoram Bar & Restaurant, Western Express Highway, Near Mahindra Gate,

Kandivali (E), Mumbai 400 001.”

4 Appellant-Plaintiff replied to the show-cause notice and relied upon several documents including repair permission of the year 1981, various licenses and NOCs issued by the different departments of the Municipal Corporation, assessment bill etc. After considering Appellant-Plaintiff’s Reply, the Respondent-Municipal Corporation issued speaking order dated 25 July 2023 recording a finding that none of the documents proved authenticity of existence of notice structure prior to the datum line of 17 April 1964 for residential structure or 1 April 1962 for commercial structure.

5 Appellant-Plaintiff instituted L.C. Suit No.1945 of 2023 before the City Civil Court challenging notice dated 8 May 2023 and speaking order dated 25 July 2023. In the Suit, Notice of Motion No.2824 of 2023 was filed seeking temporary injunction By order dated 17 August 2023, the City Civil Court has proceeded to reject the Notice of Motion. The present Appeal is filed challenging the order dated 17 August 2023.

6 Mr. Thorat, the learned counsel appearing for the Appellant-Plaintiff would contend that the suit structure is a census structure and therefore is protected under the policy of the State Government. To demonstrate that the suit structure is census structure, he would invite my attention to repair permission dated 4 August 1981 in which Appellant-Plaintiff structure has been numbered as ‘RXC-12-1/2’. That

assignment of number 'RXC-12-1/2' would demonstrate that the structure is a censused structure and therefore the same is treated as a tolerated structure. He would submit that the Respondent-Municipal Corporation has conducted census of various tolerable structures in the year 1976 and accordingly the notice structure has been included in that census. He would further place reliance on the repair permission dated 4 August 1981 in support of his contention that repair permission could be issued only in respect of authorized/tolerated structure. He would also place reliance on various licenses as well as NOCs issued by different departments of Respondent-Municipal Corporation and would submit that issuance of such licenses and NOCs would clearly indicate that the suit structure is authorized. He would further submit that the speaking order suffers from complete non-application of mind as same remark is made against every document submitted by Appellant-Plaintiff. That though the Respondent-Municipal Corporation took a defence in the Affidavit-in-Reply that the repair permission does not pertain to notice structure, the same is not a ground for rejection in the speaking order. That Respondent-Municipal Corporation has taken contradictory stands in its Affidavit-in-Reply filed before the City Civil Court. He would submit that considering the nature of documents produced by Appellant-Plaintiff, he deserves an opportunity to prove authenticity of his structure by taking suit to trial. That refusal of interim injunction would result in demolition of suit structure thereby rendering the suit infructuous. In support of his contentions Mr. Thorat would rely upon following judgments of this Court:

- i) ***Anil Madhav Gore vs. Bombay Municipal Corporation of Greater Bombay***, 2001 SCC OnLine Bom 722;
- ii) ***Ramesh Appa Rao vs. Municipal Corporation for Greater Mumbai***, 2010 SCC OnLine Bom 1490;
- iii) ***Masood Ahmed Siddiqui vs. Mumbai Municipal Corporation & Ors.***, Appeal from Order No.57 of 2013, decided on 23.01.2013.

7 Ms. Tondwalkar would appear on behalf of Respondent-Municipal Corporation and would oppose the Appeal. She would submit that the repair permission relied upon by Appellant-Plaintiff does not pertain to the notice structure. If indeed notice structure is censused one, a census certificate ought to have been produced by Appellant. That mere mention of number of 'RXC-12-1/2' for describing suit structure would not make the same census structure. That census was created for protecting slum structures as per policy of the State Government. Appellant-Plaintiff is running a restaurant and bar in the suit structure and can, by no stretch of imagination, be treated as a slum dweller. Inviting my attention to assessment bill, she would submit that the suit structure has been described as a garage. She would submit that the burden of proving authorization of structure rested on Appellant-Plaintiff, who failed to discharge the same. In support of her contention, she would rely upon order of Division Bench of this Court in ***Tushar Guru Salien vs. State of Maharashtra and others***, Public Interest Litigation No. 67 of 2017 (OS), decided on 28 August 2019.

8 I have given anxious consideration to the submissions canvassed by the learned counsels appearing for the parties and have perused pleadings and documents on record.

9 The sheet-anchor of Appellant-Plaintiff's case in support of his contention of suit structure being a censused structure is repair permission dated 4 August 1981. The said repair permission is shown to have been issued in the name of Mehmood Ahmed Rehman Khan and in the address it is claimed that two structures bearing Nos. 'RXC-12-1/2 and RX-12-1/2' are mentioned. It is Appellant-Plaintiff's case that his structure is numbered as 'RXC-12-1/2'. It is on the strength of the said number being assigned to the suit structure that Appellant-Plaintiff has raised an assertion that his structure is a censused structure.

10 Before proceeding to determine whether the Appellant-Plaintiff's structure is indeed a censused structure, it would be necessary to examine the purpose for which census was conducted. The Government of Maharashtra issued Government Resolution dated 16 May 1996 for deciding eligibility of hutment dwellers under the Slum Rehabilitation Authority Scheme. The said Government Resolution reads thus:

"Preface - In order to improve standard of living of hutment dwellers in Brihan Mumbai and in order to avoid any adverse effects harmful for public health and surrounding atmosphere, various schemes e.g. Slums Improvement Scheme, Slum Upgrading Scheme, have been implemented by the Government. However, on account of these schemes, the basic problem of hutment dwellers

could not be solved and therefore the Government, by making provision in Brihan Mumbai Development Control Rules under Rule No.33(10), had implemented Slum Reconstruction Scheme from the date 20th March, 1991. Accordingly, it was the policy of the Government to give benefits to those hutment-dwellers, whose names are appearing in the electoral roll for the year 1985 and who are residing at the same address, as beneficiaries. However, on account of some errors and mistakes therein this scheme could not be implemented speedily. And therefore the Government appointed a study group and took action to remove the errors and mistakes in the said scheme and has decided to allot the flats of 225 sq. feet carpet area, free of cost, to 40 lakhs hutment-dwellers in Brihan Mumbai.

2) Pursuant to said decision, the Government, under Government Notification dt. 16-12-1995, has appointed a separate Slum Rehabilitation Authority to implement the scheme to allot 'pucca' houses, free of cost, to 40 lakhs hutment dwellers. In the 1990 census campaign of huts, the Government had given orders to carry out census as per the names entered in then electoral roll of the year 1985 and to give protection to them. That means the hutment dwellers of the period of 10 years i.e. from 1985 to 1995 were to be kept deprived of from this scheme. As result thereof the hutment dwellers of the huts, which have been erected newly during last 10 years, might have created problems in the Implementation of this scheme; therefore the Government was considering the issue whether or not to treat those hutment dwellers beneficiaries of this scheme, whose names are appearing in the electoral roll 1-1-1995 and who are residing at the same address.

Government Resolution - The Government is according sanction to declare all those hutment-dwellers in Brihan Mumbai area eligible for their rehabilitation, who have been censused according to the electoral roll of the year 1976 and thereafter according to the electoral roll of the year 1980 and 1985 as well as the hutment- dwellers in such hutments whose names are appearing in the electoral roll dt. 1-1- 1995 and who are residing at the same address as well as the hutment dwellers whose (huts)

have come into existence after the year 1985, but whose names have been reflected in the electoral roll of the dt. 1-1-1995.

The Government further orders to initiate eviction proceedings against those hutment dwellers who are ineligible as per the aforesaid eligibility criteria.

By order and in the name of the Governor of Maharashtra"

11 Thus the main objective of issuance of Government Resolution dated 16 May 1996 was to protect slum structures up to 1 January 1995. It was directed that all hutment dwellers who were censused according to the electoral rolls of the year 1976 and thereafter according to the electoral rolls of the year 1980 and 1985 as well as the hutment dwellers whose names appeared in electoral rolls of 1 January 1995 and who continued to reside in the same hut were declared as eligible for rehabilitation. Thus, perusal of the Government Resolution dated 16 May 1996 would indicate that the object was not to conduct any census of structures in the city but also determine eligibility of hutment dwellers. Census of the year 1976 is treated as one of the eligibility criteria for making hutment dwellers eligible for rehabilitation.

12 Therefore, the Appellant-Plaintiff has not been able to prove *prima facie* that any census was directed to be conducted in the year 1976 in respect of unauthorized structures or that any structure covered by such census is a tolerable structure. The purport of the GR dated 16 May 1996 was to decide eligibility of slum dwellers for rehabilitation. The eligible slum dwellers were issued photo passes for their rehabilitation. Appellant has not placed any such photo pass or census certificate on

record to suggest that he or his predecessor in title was ever declared eligible for rehabilitation. Again if Appellant's theory of structure being censused is to be believed, there is no answer to a query as to how structure could be censused in the year 1981 (when repair permission was allegedly issued) when GR was issued in the year 1996. *Prima facie* therefore it is difficult to believe that the suit structure is censused structure.

13 Even if it is to be momentarily assumed that any census of unauthorized structures (apart from GR dated 16 May 1996) was indeed conducted in the year 1976, Appellant-Plaintiff has not placed on record any policy for conduct of such census. Nor any document appears on record to show that the suit structure was covered by such census. No census certificate or photo pass is placed on record. In fact, no policy is placed on record to prove that any structure which is declared as census structure is required to be protected. Thus, no *prima facie* case is made out by Appellant-Plaintiff to prove that the notice structure is censused or is required to be protected in any manner.

14 So far as the repair permission dated 4 August 1981 is concerned, the same would again not determine as to whether the suit structure is authorized or unauthorized. The Respondent-Municipal Corporation has filed an Affidavit stating that the repair permission is not in respect of Appellant-Plaintiff's structure. Be that as it may, it cannot be concluded on the basis of repair permission that the structure is authorized.

15 Reliance of Appellant-Plaintiff on various licenses and NOCs issued by different departments of Respondent-Municipal Corporation would not cut any ice as issuance of such licenses would not decide the nature of structure. It is not necessary that every department of the Respondent-Municipal Corporation issuing licenses or NOCs undertake the exercise of determining as to whether the structure is constructed in accordance with the development permission or not. In fact the learned counsel for the Respondent-Municipal Corporation has relied upon a disclaimer included in licenses issued by the Health Department to the effect that *“This license is issued without prejudice to the right of Municipal Corporation of Greater Mumbai to initiate any appropriate action against the premises/structure depending upon the status of the same”*. This would leave no doubt that mere issuance of licenses would not decide whether the structure is authorized or unauthorized.

16 Reliance of Mr. Thorat on various judgments of this Court does not take his case any further. In *Anil Madhav Gore* (supra) the Appellant therein had raised the claim that his structure was situated in slum area and therefore no action could be taken. In that case, it was found that the structure of the Appellant therein was not a censused structure in slum area. In the present case as well, Appellant-Plaintiff has not been able to prove that the structure is either in the slum area or has ever been censused. The order in *Masood Ahmed Siddiqui* (supra) is passed in the light of admitted factual position that there was no dispute about genuineness and authenticity of license etc. In the present case, the

Respondent-Municipal Corporation has denied that the repair permission is in respect of Appellant-Plaintiff's structure. In any event the order in *Masood Ahmed Siddiqui* (supra) has been passed in the light of facts in this case and the said decision has no application to the present case. In *Ramesh Appa Rao* (supra) again related to claim of notice structure being situated in slum area and covered by census. This Court rejected the claim of the suit structure being censused structure. The judgment therefore has no application to the present case.

17 In my view, therefore, the Appellant-Plaintiff failed to make out any *prima facie* case for grant of interim injunction. No fault can be found in the order dated 17 August 2023 passed by the City Civil Court rejecting the Notice of Motion No. 2824/2023. The Appeal being devoid of merits is dismissed without any orders as to costs.

18 In view of the disposal of the Appeal, the Interim Application is also disposed of accordingly.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

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