

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.666 OF 2023
WITH
INTERIM APPLICATION NO.14579 OF 2023

Arvind Nisharam Sharma

... Appellant

Versus

The Designated Officer,
The Executive Engineer

... Respondent

WITH
APPEAL FROM ORDER NO.667 OF 2023
WITH
INTERIM APPLICATION NO.14582 OF 2023

Joginder Nisharam Sharma

... Appellant

Versus

The Designated Officer,
The Executive Engineer

... Respondent

Mr. Amrut Joshi, i/b. Sanket Mungale for Appellant.

Mrs. Smita Tondwalkar, for Respondent-MCGM.

Mr. Kiran Jadhav, J. E. (B. & F.) 'T' Ward BMC present.

CORAM: SANDEEP V. MARNE, J.

DATE : 23 AUGUST 2023.

ORAL ORDER:

The appellants have filed these Appeals against the Orders dated 01 August 2023 passed by the City Civil Court, Mumbai dismissing their Motions filed seeking temporary injunction.

2. Facts in both the appeals are similar and therefore facts of AO 666 of 2023 are discussed. Plaintiff has instituted L. C. Suit No.1506 of 2023 challenging notice dated 15 January 2021 issued by the Municipal Corporation for Greater Mumbai under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1988 as well as Speaking Order dated 01 June 2023. The notice is in respect of allegation of erection of extension to the existing structure at 4, Gurkha Chawl, Opp. Jawahar Talkies, Dr. R. P. Road, Mulund (West), Mumbai. After considering appellants' reply a speaking order was passed. It appears that the Notice dated 15 January 2021 and the speaking order passed in pursuance thereof were subject matter of previously instituted Suit, which was decreed granting liberty to the Respondent-Municipal Corporation to pass a fresh speaking order. Accordingly, a fresh speaking order dated 01 June 2023 has been passed by the Municipal Corporation calling upon the appellant to remove the unauthorized structure.

3. Mr. Joshi, the learned counsel appearing for Appellants would contend that the structures in respect of which the impugned notices are issued are part of a protected slum and that survey process for declaring the said structures as slum is in progress. He would submit that since the structures form part of protected slum, the same cannot be

demolished by Municipal Corporation. That the Appellants would be entitled to permanent alternate accommodations in lieu of their slum structures. He would submit that if the Municipal Corporation is permitted to demolish the first floor of structures, in respect of which notices are issued, the same would affect Appellants' rights with regard to area of permanent alternate accommodation. He would submit that the slum survey is underway which would comprise area measurement of structures and that demolition of the first floors would drastically reduce rights of the appellants with regard to entitled area while carrying out measurement. In support of his contention Mr. Joshi would place reliance on judgment of this Court in **Ramawatar Babulal Jajodia Vs. Municipal Corporation of Greater Mumbai**, 2014(1) Mh.L.J. 359.

4. *Per contra*, Mrs. Tondawalkar the learned counsel appearing for Municipal Corporation would oppose the appeals and support the orders passed by the City Civil Court. She would submit that the appellants did not produce any photo pass in support of their claim of the structures being slum. She would further submit that the notices are in respect of only vertical extension to the existing structures. She would place reliance on the judgment of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) Vs. Bhiwandi Nizampur Minicipal Corporation & Ors.**, Suo Motu Public Interest Litigation No.1 of 2020 decided on 26 February 2023.

5. I have heard the submissions canvassed by the learned counsels for the parties. Perusal of the notices dated 15 January 2021

would indicate that the same are issued only in respect of unauthorized vertical extension to the existing structures. Thus, existing ground floor structures are not proposed to be demolished. This would take care of appellants' apprehension about slum survey. Even if the Municipal Corporation demolishes the vertical extensions in the form of first floors, the appellants' ground floor structures would still be retained and they would be able to participate in the slum survey as and when conducted. If indeed the original structures (sans vertical extension) qualify to be treated as slum in the survey, the rights and entitlements under rehabilitation scheme would accordingly determined.

6. As of today, Appellants have not been able to place on record any development permission either for erection of original structures, much less in respect of vertical extensions. Luckily for them, the Municipal Corporation is proposing demolition only of the vertical extensions in the form of first floor structures.

7. Reliance of Mr. Joshi on the judgment of this Court in *Ramawatar Babulal Jajodia* (supra) is of little assistance to appellants' case. In that case, the notice was issued not just for first floor structure but also for the ground floor structure. In that view of the matter, this Court held that pending trial of the suit, the entire structure consisting ground floor and first floor deserved to be protected as the same came in slum area. In the present case, even the ground floor structure is yet to be declared as a protected slum. Even if it is assumed for the sake of arguments that the land on which Appellants' structures Are situated is

declared as slum area, their ground floor structures are not proposed to be demolished. In that view of the matter, judgment in *Ramawatar Babulal Jajodia* would have no application to the present case.

8. The Municipal Corporation cannot be faulted in preventing vertical growth of slum structures. In this regard, reliance of Mrs. Tondwalkar on the judgment of this Court in *Bhiwandi Nizampur Municipal Corporation & Ors.* (supra) appears to be apposite. By that judgment, this Court has not only recognized the right of planning & local authorities (Municipal Corporation in this case) to take action against unauthorized structures located in slum area, but has issued directions to all the planning and local authorities to take action against unauthorized structures.

9. In absence of production of any permission for erection of vertical extension to the ground floor structures, it cannot be said that City Civil Court has not committed any error in rejecting Notices of Motion.

10. I therefore do not find any merit in the present appeals. Appeals are dismissed without any order as to costs.

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SANDEEP V. MARNE, J.