

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 796 OF 2023

IN

NOTICE OF MOTION NO. 95 OF 2022

IN

SUIT NO. 1841 OF 2017

Fatema Hakimuddin Rassiwalla

**...Appellant
(Orig. Plaintiff)**

V/s.

**Municipal Corporation of
Greater Mumbai and Ors.**

**..Respondents
(Orig. Defendants)**

Mr. Arshil Shah a/w. Mr. Rasesh Shah and Ms. Neha Thakkar, for the Appellant.

Mrs. Smita Tondwalkar, for the Respondent-M.C.G.M.

Mr. Sanket Sakalkar, Junior Engineer, BMC, 'C' Ward present.

CORAM : SANDEEP V. MARNE, J.

Dated : 16 October 2023.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge in this Appeal is to the Order dated 14 August 2023 passed by the City Civil Court rejecting Notice of

Motion No. 95/2022. The Motion was filed by the Plaintiff seeking a direction against Respondent-Municipal Corporation for purging the act of disobedience/contempt of order dated 6 March 2021, as extended from time to time. The Motion was filed complaining that the Respondent-Municipal Corporation carried out the action of demolition on 6 September 2021 in disregard to the order dated 6 March 2021. Alternatively, the Plaintiffs sought permission for reconstruction of the premises demolished in breach of order dated 6 March 2021.

3. It appears that the suit is filed by the Plaintiff challenging the notice dated 24 January 2017 under the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1988. The Notice of Motion seeking temporary injunction was rejected by the City Civil Court. Aggrieved by rejection of Notice of Motion for temporary injunction, Appeal from Order (St.) No. 94429/2020 was filed before this Court, which came to be disposed of by order dated 1 February 2021 after noticing that the Municipal Corporation had passed a Speaking Order dated 21 December 2020. It appears that after disposal of the Appeal on 1 February 2021, the Municipal Corporation carried out demolition action at the suit premises on 12 February 2021. The disposed Appeal was moved before this Court on 25 February 2021 stating that despite demolition action conducted on 12 February 2021, there was one room, in which an old lady was residing and that except the said

room, the entire structure was demolished. This Court therefore directed maintenance of *status-quo* in respect of that Room for a period of one week. That *status-quo* order was continued by the City Civil Court by its order dated 6 March 2021.

4. It is Appellant's claim that, in violation of the said order of this Court dated 25 February 2021 as continued by the City Civil Court on 6 March 2021, the Respondent-Municipal Corporation carried out further demolition action on 6 September 2021 and removed the roof of the room in respect of which *status-quo* was granted. Aggrieved by the action of the Municipal corporation in carrying out demolition action on 6 September 2021, the Appellant filed Notice of Motion No. 95/2022 alleging that there was contempt on the part of the Respondent-Municipal Corporation in conducting demolition action in breach of the *status-quo* order.

5. It is the case of the Respondent -Municipal Corporation that Plaintiff had taken out Notice of Motion No. 1437/2021 seeking a direction for reconstruction of the demolished structure which was demolished on 12 February 2021. That Notice of Motion was rejected by the City Civil Court by order dated 2 August 2021. On account of rejection of Notice of Motion No. 1437/2021, some miscommunication took place, where the Officials of the Municipal Corporation believed that even the

status-quo order was vacated. It is on this ground that on 6 September 2021, the team of the Municipal Corporation reached the spot for carrying out further demolition. It is further submitted that immediately after noticing that the order of *status-quo* continuing, the team stopped the demolition action within ten minutes.

6. Photographs produced on record by the Municipal Corporation would indicate that after carrying out the demolition action on 12 February 2021, the roof of a small residential room was retained while rest of the structure with a connected roof was demolished. The photographs of demolition action taken of 6 September 2021 would indicate that some part of the roof of that room was also demolished. *Prima-facie*, therefore the action of the Municipal Corporation in visiting the site for carrying out the demolition on 6 September 2021 appears to be an act of overreaching the status-quo order granted by this Court and continued by the City Civil Court.

7. The question, however, is whether the Plaintiff can be permitted to reconstruct the roof of the structure which is demolished on 6 September 2021. After comparing the photographs of demolition action conducted on 12 February 2021 and 6 September 2021, I am of the view that neither the Municipal Corporation can be directed nor the Petitioner can be permitted to reconstruct the roof of the concerned room. It appears that the

concerned room in respect of which *status-quo* was granted by this Court on 25 February 2021 has a connecting roof to the adjoining rooms. Therefore, once roof of the adjoining rooms was already demolished on 12 February 2021, demolition of part of the roof of the concerned room on 6 September 2021, though may amount to breach of *status-quo* order, would not entitle the Plaintiff to seek a direction against the Respondent-Corporation to reconstruct the same or to permit her to reconstruct it. Considering the nature of demolished structure as it stands today, it is too dangerous to permit anyone to occupy the said structure. In the light of this position, instead of granting any relief to the Appellant in the present Appeal, it would be appropriate that the City Civil Court expedites the hearing of the suit so that rights and contentions of the Appellant are determined in an expeditious way rather than undertaking the exercise of reconstructing the roof of just one room, when the adjoining rooms have already been demolished.

8. Mr. Shah, the learned counsel for the Appellant would submit that till the suit is decided, the Appellant be permitted to atleast cover the room in respect of which *status-quo* was granted with a tarpaulin sheet with a view to protect that room from encroachers. He would submit that after partial opening of the roof of that room, miscreants are entering and throwing things from open roof of the room, causing nuisance. Therefore, while rejecting the Plaintiff's prayer for reconstruction of the roof of the concerned

room, the Plaintiff can be permitted to cover the same with a tarpaulin sheet.

9. The present Appeal is accordingly **disposed of** with a direction to the City Civil Court to expedite the hearing of the Suit and to make an endeavor to decide the same as expeditiously as possible, preferably within a period of one year from today. Till decision of the Suit, the Plaintiff is permitted to cover only the room referred to in the order dated 25 February 2021 with a tarpaulin sheet. She shall not cover the roof of rest of the structure.

SANDEEP V. MARNE, J.