IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.820 OF 2023
WITH
INTERIM APPLICATION NO.15887 OF 2023
IN
APPEAL FROM ORDER NO.820 OF 2023

Abdul Khalique Khan
President of
Committee Madaresa Chishtiya
Manaviya Bazme Khalil Madina
Masjid, Sion Mumbai ....Appellant/Applicant
V/S
The Municipal Corporation of
Greater Mumbai & Anr. ....Respondents

...

Mr. Viraj P. Sigh a/w Mr. Shailesh Pal for the Appellant/Applicant.
Ms. Smita Tondwalkar for Respondents-MCGM.

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CORAM: SANDEEP V. MARNE, J.
DATE : OCTOBER 04, 2023.

P.C.:

1 This Appeal is filed by the Appellant challenging order dated 16 September 2023 passed by the City Civil Court rejecting Notice of Motion No.2601 of 2023.

2 The Appellant/Plaintiff has instituted Long Cause Suit No.1102 of 2023 before the City Civil Court challenging the notice dated 1 March

2023 issued under the provisions of 3(z)(1)(iv) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. In that suit, the Appellant/Plaintiff filed a Notice of Motion to restrain the Municipal Corporation from acting upon the said notice. The City Civil Court has proceeded to reject the Notice of Motion.

3 I have heard the learned Counsel appearing for the Appellant. He would submit that the area in which the suit structure is located is covered by notified slum area. That therefore the relevant date on which the existence of structure is required to be demonstrated is 1 January 2000. Inviting my attention to the finding recorded by the City Civil Court in paragraph 22 of the impugned order, he would submit that the City Civil Court has erroneously assumed the datum line to be “prior to 1961-62”. He would further submit that the impugned notice was given only on account of the complaint made by the office bearer of Vishwa Hindu Parishad. He would further submit that sufficient documents were produced before the Municipal Corporation to demonstrate existence of the suit structure prior to 1 January 2000. He would rely upon electricity bill, advocate notice dated 6 August 1999, receipt issued by the Assistant Superintendent, City Survey Office, Mumbai-2, Mumbai, assessment sheet issued by the Municipal Corporation as well as various receipts of payment of property tax. He would submit that based on the said documents, a prima facie case was made out by the Appellant/Plaintiff to indicate existence of the suit structure prior to 1 January 2000.

4 Ms. Tondwalkar, the learned Counsel appearing for the Respondent-Municipal Corporation on the other hand would oppose the Appeal and support the order passed by the City Civil Court. She would submit that the relevant documents pertaining to assessment relied upon by the Appellant/Plaintiff do not relate to the suit structure. That on account of inability of the Appellant/Plaintiff to prove existence of the suit structure prior to 1 January 2000, the Respondent-Municipal Corporation has rejected the document and has passed speaking order dated 14 March 2023. She would pray for dismissal of the Appeal.

5 I have considered the submissions.

6 It must be observed that the very outset there is an error on the part of the City Civil Court in assuming that the relevant datum line in respect of the suit structure is “prior to 1961-62”. Perusal of the notice dated 1 March 2023 would clearly indicate that the State Government has taken a decision vide Government Resolutions dated 16 May 2015 and 16 May 2018 to demolish the slum structures erected after 1 January 2000. This would indicate that the structures located in the slum areas which are constructed prior to 1 January 2000 are protected. Therefore, the City Civil Court has committed an error in expecting the Plaintiff-Appellant to prove existence of the suit structures “prior to 1961-62”.

7 After accepting the contention of the learned Counsel appearing for the Appellant/Plaintiff that the correct datum line for determining as to

whether the suit structure is tolerated or not is 1 January 2000, he was called upon to demonstrate atleast before this Court any document to suggest that the suit structure existed prior to 1 January 2000. He would invite my attention to the electricity bill for the month of February 2003. This bill would not demonstrate existence of the suit structure prior to 1 January 2000. He would then rely upon advocate notice dated 6 August 1999 addressed on behalf of Mr. Rafiq Anwar Khan, to the Ward Officer, G/N Municipal Ward, Assessment Tax Department, stating that said Rafiq Ahemad Khan had purchased the structure therein Municipal Corporation Property Tax Nos.GN-19-0332-00-A and G-7158(4)-10-488/ A.T. No.CI Sheet on BMC Flat CS No.181 of Dharavi Division. He would submit that the factum of addressing the said notice to the Municipal Corporation on 6 August 1999 and its acknowledgment on the same day, would show that the suit structure existed prior to 1 January 2000. He would submit that it is very same structure which Mr. Rafiq Ahemad Khan later transferred to the Plaintiff-Trust. He would further submit that after purchasing the said structure, the Plaintiff-Trust has been paying property tax to the Municipal Corporation. He would invite my attention to the receipt dated 12 October 2007 issued by the Municipal Corporation towards the payment of property tax. However, perusal of said receipt would indicate that the same is issued in respect of structure bearing Nos. “GN-7157(20365/6) and GN-19-017-26-8, which does not match with the number indicated in the Advocate’s notice dated 6 August 1999.

8 Thus there is nothing to indicate that the structure covered by the receipt dated 12 October 2007 matches the structure in respect of which notice dated 6 August 1999 was issued. It is therefore difficult to believe that the structure included in the notice dated 6 August 1999 is indeed the suit structure. The learned Counsel appearing for the Appellant would also rely upon the receipt issued by the Assistant Superintendent, City Survey Office No.2, Mumbai on 9 August 1999 to prove that the structure existed prior to 1 January 2000. Firstly, there is nothing to indicate that the said document was produced by the Appellant before the Municipal Corporation. Secondly, the said document also does not show, in any manner, that the same pertains to the suit structure. In fact it appears that Mr. Rafiq Ahemed Khan has purchased multiple properties. Just because there is a transaction of sale between the Plaintiff-Trust and Rafiq Ahemad Khan would not indicate that the suit structure existed prior to 1 January 2000.

9 The Municipal Corporation has considered all the documents produced by the Plaintiff-Trust. It had undertaken an enquiry by addressing a communication to the Tax Department, who has replied on 22 August 2023 confirming that the suit structure has not been assessed in the records of the Municipal Corporation. The said letter dated 22 August 2023 would also indicate that the document of Tax Assessment sought to be relied upon by the Plaintiff/Appellant may not relate to the suit structure.

10 In that view of the matter, it is difficult to hold that the Plaintiff/Appellant made out any prima facie case for grant of temporary injunction. The Appeal being devoid of merits is dismissed without any order as to costs.

11 It is clarified that the observations made in the present order are only for the purpose of determining whether Plaintiff-Trust has made out a prima facie case for grant of temporary injunction. The suit shall be decided by the City Civil Court without being influenced by any of the observations made in the present order.

12 With the disposal of the above Appeal, the Interim Application shall stand disposed of accordingly.

(SANDEEP V. MARNE, J.)