

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 929 OF 2023
IN
NOTICE OF MOTION NO. 4594 OF 2016
IN
L.C. SUIT NO. 2777 OF 2016

1. Deepak Keshav Shinde and Ors.Appellants

V/s.

The Mumbai Municipal Corporation
of Greater Mumbai

....Respondent

Mr. Mohit Jadhav a/w. Ms. Megha Shigavan and Ms. Shubham Shinde,
for the Appellants.

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

CORAM : SANDEEP V. MARNE, J.

Dated : 10 November 2023.

P.C. :

1. **Admit.** With the consent of the parties, the Appeal is taken up
for final disposal.

2. By this Appeal, the Appellant challenges the order dated 19 October 2023 passed by the City Civil Court rejecting Notice of Motion No. 4594 of 2016 filed seeking temporary injunction in respect of letters dated 10 November 2016 and 22 November 2016 issued by the Municipal Corporation for Greater Mumbai.

3. The dispute is with regard to the right of the Municipal Corporation to lay sewer line on the land in which Plaintiff claims ownership. It appears that the Municipal Corporation undertook the work of laying the sewer line under 'SWACHA BHARAT ABHIYAN' and the Solid Waste Management Department of the Municipal Corporation issued permission for laying sewer line in favour of the Contractor on 1 January 2016. When the Plaintiff noticed grant of such permission, he raised objection vide letter dated 24 October 2016 claiming that he is the owner of the land and sewer line cannot be laid without his permission. The Municipal Corporation issued letter dated 10 November 2016 to the Plaintiff calling him upon to prove his claim of ownership. Plaintiff accordingly submitted reply dated 11 November 2016 to demonstrate that he is the owner of the property in question. The Municipal Corporation however issued letter dated 22 November 2016 and instead going into the issue of ownership, the Municipal Corporation merely stated that the work of laying sewer line was in pursuance of the SWACHA BHARAT ABHIYAN undertaken by the Municipal Corporation. Thus, though the Municipal Corporation initially questioned Plaintiff's ownership over the land in question, subsequently it changed the stand and asserted its right to lay

the sewer line by referring to the SWACHA BHARAT ABHIYAN Scheme.

4. The Plaintiff then instituted Long Cause Suit No. 2777/2016 seeking a declaration that the letters dated 10 November 2016 and 22 November 2016 are illegal and not binding on the Plaintiff. The relief of injunction is also sought to prevent the Municipal Corporation from entering upon the suit property and laying the sewer line. In the suit, Notice of Motion No. 4594 of 2016 was filed seeking temporary injunction. It appears that the City Civil Court granted *ad-interim* injunction in favour of the Plaintiff on 1 December 2016. The Municipal Corporation filed its reply to the Motion on 9 August 2017 taking a stand that the work of sewer line was already completed. The City Civil Court has proceeded to dismiss the Notice of Motion holding that the Plaintiff has an alternate and an equally efficacious remedy of referring the matter to the Chief Judge of the Small Causes Court under sub-section (3) of Section 226 of the Municipal Corporation Act, 1888. On that count, the City Civil Court has refused to entertain the application for temporary injunction. The City Civil Court has also referred to the provisions of Section 41(h) of the Specific Reliefs Act for refusal of interim relief.

5. I have considered the submissions canvassed by the learned counsel for the parties.

6. The City Civil Court has proceeded to reject the Notice of Motion by observing that the Plaintiff has an alternate and equally efficacious remedy under sub-section (3) of Section 226. Section 226 deals with the powers of the Commissioner to dig, construct and maintain tunnels below any land and to undertake related works for carrying sewage or storm water. Section 226 reads thus :

[226. Powers of Commissioner to dig, construct and maintain tunnels below any land and to undertake related works for carrying sewage or storm water

(1) For the purpose of carrying sewage or storm water, the Commissioner may dig, construct and maintain a tunnel or tunnels below any land, whether such land is built upon or is vacant, and undertake related works and do such other acts as he deems necessary for digging, construction, maintaining such tunnel or tunnels and undertaking other related works.

(2) Before digging and construction of any tunnel, or any other related work is undertaken by the Commissioner under sub-section (1), he shall cause to be published in the local newspapers in English, Marathi, Hindi, Gujarati and Urdu a notice intimating his intention to dig, construct and maintain such tunnel and to undertake and maintain other related work. Such notice shall indicate the alignment and the depth and the length and circumference of the tunnel and the buildings under which such tunnel is proposed to be constructed and maintained and other related works which are proposed to be undertaken and maintained. Such notice shall also specify the date, which shall not be earlier than sixty days from the date of its publication in the local newspapers, on or after which the digging and construction of the tunnel is proposed to be started or such related work is proposed to be undertaken:

Provided that, simultaneously with the publication of such notice in the newspapers, the Commissioner shall, by a notice served in the manner provided in sections 484 and 485, call upon the owner of, or any other person, who, in the opinion of the Commissioner, may be interested in, the land below which such tunnel is to be dug and constructed or such related work is to be undertaken, to show cause, within thirty days from the date of its publication in the local newspapers, why such tunnel should not be constructed and such related work should not be undertaken. After considering the cause, if any, shown by the owner of or such other person interested in, such land, and after giving a reasonable opportunity to the

persons concerned of being heard, the Commissioner may pass such orders as he deems fit.

(3) Any person aggrieved by any order passed by the Commissioner under sub section (2) may, within thirty days from the receipt of such order, refer the matter for the decision of the Chief Judge of of the Small Cause Courts, whose decision shall be final and shall not be called in question in any suit or other legal proceeding in any Court:

Provided that, the Chief Judge shall not entertain any such reference, which is not made to him, within the period specified in this sub-section and he shall summarily dismiss such reference.

(4) Whether a reference is made to the Chief Judge under sub-section (3) within the specified period and a notice thereof is served by the party concerned on the Commissioner. the Commissioner shall not commence the digging and construction of the tunnel or undertake any related work, unless the Chief Judge has summarily dismissed such reference or his decided the reference and allowed the digging and construction of such tunnel and undertaking of such related work.

7. Thus, under Section 226, the Municipal Corporation is empowered to dig, construct and maintain a tunnel on any land whether constructed or vacant. However before undertaking the work, under Section 226(1), the Municipal Commissioner is required to follow the procedure under sub-section (2). It is only after the procedure under Section 226 is followed, that the aggrieved person can refer the matter for decision to the Chief Judge of the Small Causes Court. In the present case, admittedly the Municipal Corporation has not issued any notice intimating the intention to dig or construct any tunnel, or any other related work. Since the procedure under sub-section (2) of Section 226 is not followed, there is no question of Plaintiff seeking any reference to the Chief Judge of the Small Causes Court under sub-section (3). The finding of the Trial Court about availability of alternate remedy to the Plaintiff is thus unsustainable.

Plaintiff claims ownership in respect of the land in question and the Municipal Corporation initially questioned Plaintiff's ownership. However, once Plaintiff sought to establish his ownership by giving reply dated 11 November 2016, the Municipal Corporation took a stand that it is entitled to lay the sewer line in accordance with the SWACHA BHARAT ABHIYAN Scheme.

8. Mr. Jadhav has relied upon communication dated 8 November 2013 issued by the Municipal Corporation in pursuance of complaint of the Plaintiff about illegal felling of trees and shrubs. In that letter, the Municipal Corporation acknowledged the ownership of the Plaintiff in respect of the land in question and held Plaintiff responsible for maintaining cleanliness and hygiene in the property. In my view, therefore the Municipal Corporation cannot lay sewer line in the lands allegedly owned by the Plaintiff without following due procedure of sub-section (2) of Section 226. If the sewer line is already laid as claimed by the Municipal Corporation in its reply filed before the City Civil Court, the laying of such sewer line would not have any effect on the claim of the Plaintiff about ownership in the land in question. If, on the other hand, the work of sewer line is still incomplete, the same cannot be completed in the land of the Plaintiff without following the provisions of Section 226(2).

9. The Appeal accordingly partly succeeds. The order dated 19 October 2023 passed by the City Civil Court is set aside. If the Municipal Corporation has already laid sewer line in the suit property, laying of such sewerage shall not affect the ownership of the Plaintiff.

If the laying of sewerage is still not completed, the same shall not be completed without following the procedure under sub-section (2) of Section 226. With the above directions, the Appeal is **disposed of**.

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SANDEEP V. MARNE, J.