

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.991 OF 2023

WITH

INTERIM APPLICATION NO.17784 OF 2023

IN

APPEAL FROM ORDER NO.991 OF 2023

Sushil Chandramohan Bhandari] ... Appellant/Applicant

Versus

Municipal Corporation of Greater Mumbai] ... Respondent

WITH

APPEAL FROM ORDER NO.992 OF 2023

WITH

INTERIM APPLICATION NO.17787 OF 2023

IN

APPEAL FROM ORDER NO.992 OF 2023

Chetan Jaswantraaj Bhandari] ... Appellant/Applicant

Versus

Municipal Corporation of Greater Mumbai] ... Respondent

Mr. Pradeep Thorat a/w Ms. Aditi Naikare for Appellants in both Appeals.

Mr. Dharmesh Vyas a/w Ms. Smita Tondwalkar for Respondent – MCGM in both Appeals

CORAM :- SANDEEP V. MARNE, J.

DATE :- 21 DECEMBER, 2023

PC :

1. ***Admit.*** With the consent of the learned counsel for parties, the Appeals are taken up for hearing.

2. These Appeals are filed challenging the orders dated 5 December 2023 passed by the City Civil Court rejecting Notice of Motion No.421/2018 filed in LC Suit No.97/2018 and Notice of Motion No.423/2018 filed in LC Suit No.99/2018. The City Civil Court has refused to grant temporary injunction in favour of the Appellants / Plaintiffs for restraining the Respondent – Municipal Corporation from acting on the Notices dated 7 July 2017 issued under the provisions of Section 351 of The Mumbai Municipal Corporation Act, 1888 (**‘MMC Act’**).

3. Briefly stated, facts of the case are that the Plaintiffs claim themselves to be the tenants in respect of Shop No.1 admeasuring 5.10 meters X 3.10 meters and Shop No.2 admeasuring 5.40 meters X 1.90 meters situated at Ramsajiwan Tiwari Chawl at CTS No.524, Village Kanheri, Western Express Highway, Borivali (East), Mumbai. The Plaintiffs contend that M/s. Mulraj Khatau Mills Ltd. are the owners of land bearing CTS No.524, 525/4 and 525/5. That, the said owner gave land bearing CTS No.524 and 525/5 to Shri Dayaram Bansalochan Pandey on lease and in turn the said lessee granted land admeasuring 1000 sq.yards on sub-lease basis to Shri Ramsajiwan @ Sajjan Arjundas Tiwari. That said Ramsajiwan Tiwari constructed structures on the land consisting of 4 shops and a stable. It is claimed that the structure consisting of 4 shops was coming in the alignment of 30 inches wide water line and therefore in the year 1994, the Municipal Corporation of

Greater Mumbai (**MCGM**) directed Ramsajiwan Tiwari to shift the chawl beyond the alignment of water line. Accordingly, a letter to that effect was issued in the name of Ramsajiwan Tiwari on 31 December 1994. It is contended by the Plaintiffs that in pursuance of the said directives of the Municipal Corporation, said Ramsajiwan Tiwari shifted the structure consisting of 4 shops on the rear side and within land bearing CTS No.524. Shop Nos.1 and 2 situated in the said structure constructed and shifted by Ramsajiwan Tiwari form part of the suit property, which are in occupation of Plaintiffs/Appellants as tenants of Shri Ramsajiwan Tiwari.

4. The Plaintiffs contend that Notice dated 20 April 1995 was issued by the Municipal Corporation to Ramsajiwan Tiwari for removal of the structure comprising of 4 shops. That, the Notice was replied by relying on documents to show authorization of the structure. The local Councilor also justified existence of structure of Ramsajiwan Tiwari. Plaintiffs claim that after submission of reply, Notice dated 20 April 1995 was not acted upon by the Municipal Corporation and the same was dropped. Plaintiffs also rely upon survey conducted by City Survey Office showing existence of structure with 4 shops. This is how Plaintiffs claim that the suit shops are authorized and tolerated structures. For the sake of clarity, the entire structure constructed by Ramsajiwan Tiwari consisting of 4 shops is hereinafter referred to as '**the structure**' and Shop Nos. 1 and 2 occupied by Appellants are referred to as '**the Suit Shops**'. The remaining two shops in the structure are apparently in occupation of Ramsajiwan Tiwari.

5. It appears that the Mumbai Metropolitan Region Development Authority (**MMRDA**) has undertaken execution of Metro

work and requested removal of constructions coming in the alignment of Metro. Accordingly, the Public Works Department ('PWD') of Government of Maharashtra requested the Municipal Corporation to conduct demolition drive in respect of old and new unauthorized structures on west side of National Park between Shri Krishna Nagar to Omkareshwar Mandir. Acting on the said letter of the PWD, the Municipal Corporation issued Notices dated 7 July 2017 to Appellants in respect of Suit Shops under the provisions of Section 351 of the MMC Act. The notices were replied by the appellants by relying on several documents. The Municipal Corporation passed speaking orders dated 3 January 2018 rejecting the replies filed by the Appellants.

6. The Appellants have instituted LC Suit No.97/2018 and 99/2018 before the City Civil Court challenging the Notices dated 7 July 2017 and speaking orders dated 3 January 2018. They filed Motions in the suits seeking temporary injunction. It appears that Ramsajiwan Tiwari was also issued similar notices on 7 July 2017 and he instituted LC Suit No.89/2018. He also filed AO No.158/2018. By order dated 3 March 2018, the City Civil Court refused to grant ad-interim relief in Suits filed by the trio. The Appellants and Ramsajiwan Tiwari therefore filed AO Nos.156//2018 and 157/2018 before this Court. By orders dated 8 October 2018, this Court directed the City Civil Court to decide the Motions for temporary injunction and continued the ad-interim relief.

7. After order of this Court, Mr. Ramsajiwan Tiwari withdrew his Suit No.89/2018 on 6 September 2021. The Appellants continued with their suit. By order dated 5 December 2023, the City Civil Court has rejected Notices of Motion No.421/2018 and 423/2018 filed by the

Appellants for grant of temporary injunction. Aggrieved by the order dated 5 December 2023, the Appellants have filed the present Appeals.

8. Mr. Thorat, the learned counsel appearing for the Appellants, would submit that the suit structures are authorized and tolerated and that therefore notices issued by the Municipal Corporation on 7 July 2017 are *ex-facie* illegal. In support of his contention, he would invite my attention to letter dated 31 December 1994 received to Ramsajiwan Tiwari directing shifting of the structure. According to Mr. Thorat, the said letter dated 31 December 1994 would clearly demonstrate that the original structure was authorized and that the same was shifted as per the directives of the Municipal Corporation. That, previously issued Notice dated 20 April 1995 in respect of the structure containing 4 shops was dropped by the Municipal Corporation whereby indicating authorization of the structure. That, the structure in which the suit shops are located, is also reflected on the city survey map.

9. Mr. Thorat would submit that the City Civil Court has erroneously given weightage to withdrawal of suit by Ramsajiwan Tiwari. He would submit that withdrawal of suit by Ramsajiwan Tiwari in respect of suit shops in his occupation would not mean that the Appellants lost their rights in respect of the suit shops. That, the Municipal Corporation took a fallacious stand before the City Civil Court that the entire structure consisting of 4 shops was demolished when in fact no such demolition was ever carried out. He would draw my attention to the photographs showing existence of 4 shops in the structure including 2 shops of Ramsajiwan Tiwari. He would counter the findings recorded by the City Civil Court about the suit structure

not matching with the size of structure indicated in shifting permission. He would submit that in the shifting permission, the size of the structure is shown as 178 sq.ft. + ota of 121 st.ft. (total area of 299 sq.ft.) According to Mr. Thorat, the area of 2 shops indicated in the impugned notices is approximately 109.75 sq.ft. + 169 st.ft. (total 278.75 sq.ft.), which more or less matches with the structure indicated in the shifting permission.

10. Lastly, Mr. Thorat would contend that since the suit shops are to be removed for execution of project by MMRDA, the Appellants are entitled for grant of benefit for rehabilitation from MMRDA and therefore both the Appellants have submitted their documents with MMRDA for proving their eligibility. If suit shops are demolished before consideration of eligibility by MMRDA, the Appellants would lose rehabilitation benefits from MMRDA. He would therefore submit that since the structures are protected after issuance of notices dated 7 July 2017, the temporary injunction is required to be granted till disposal of the suits.

11. *Per contra*, Mr. Vyas learned Counsel appearing for Respondent – Municipal Corporation, would oppose the Appeals and support the order passed by the City Civil Court. According to Mr. Vyas, none of the documents relied upon by the Appellants relate to the suit structure. Inviting my attention to the letter dated 31 December 1994 directing shifting of the structure, Mr. Vyas would submit that the area of the structure indicated in the letter admeasures 8'10" X 16'9" plus ota of 16'9" X 7'3". As against 160 sq.ft. area of the structure in the letter dated 31 December 1994, the area of 4 notice-shops is 585 sq.ft. In the earlier notice dated 20 April 1995, which is claimed to have been

dropped, the area of structure is 12.60 meters X 7.35 meters (954 sq.ft.) which again does not match the total area of 4 shops of 585 sq.ft. Similar is the position with regard to the extract of properties relied upon by the Appellants where the area that shed is shown as 10ft. X 10ft. and stable of 90 khillas. That, the structures in none of the documents relied upon by the Appellants match with the notice-structures. That, therefore, the Municipal Corporation sufficiently demonstrated before the City Civil Court that the suit structures are constructed in blatant unauthorized manner and the same are required to be demolished.

12. Mr.Vyas would submit that the notice-structures are required to be removed for execution of Metro work and therefore temporary injunction cannot be granted, which would result in delay in execution of public work. That, the notice-structures are indicated in red line in the measurement map of City Survey Office which again proves that the structures are unauthorized. He would pray for dismissal of the Appeals.

13. The Appellants claim themselves to be the tenants of Ramsajiwan Tiwari. They have placed on record rent receipts issued by Ramsajiwan Tiwari on 1 July 1995 and 1 April 1996. The Appellants have placed reliance on various communications issued by the Municipal Corporation in the name of Ramsajiwan Tiwari in respect of their claim that the suit structures are authorized and tolerated structures. Heavy reliance is placed on the letter dated 31/12/1994 issued by the Municipal Corporation to Ramsajiwan Tiwari. The letter reads thus :

“MUNICIPAL CORPORATION OF GREATER BOMBAY

To

*Shri Ramsajiwan A. Tiwari,
Shri. Dayaram B. Pande,
near Omkareshwar Temple,
Western Express Highway,
Borivli/East,
Bombay-400 066.*

*Sub :- Shifting of the existing structures
at near Omkareshwar temple, Western
Express Highway, Borivli (East).*

Sirs,

Since you have removed your structure coming along the alignment of 750 mm dia. water main, there is no objection to shift the existing structure admeasuring 10'8" x 16'9" and opla admeasuring 16'9" x 7'3" in the rear side as shown in the sketch overleaf. Please note that this N.O.C. is without prejudice to the status of the structure. Regular permission follows.

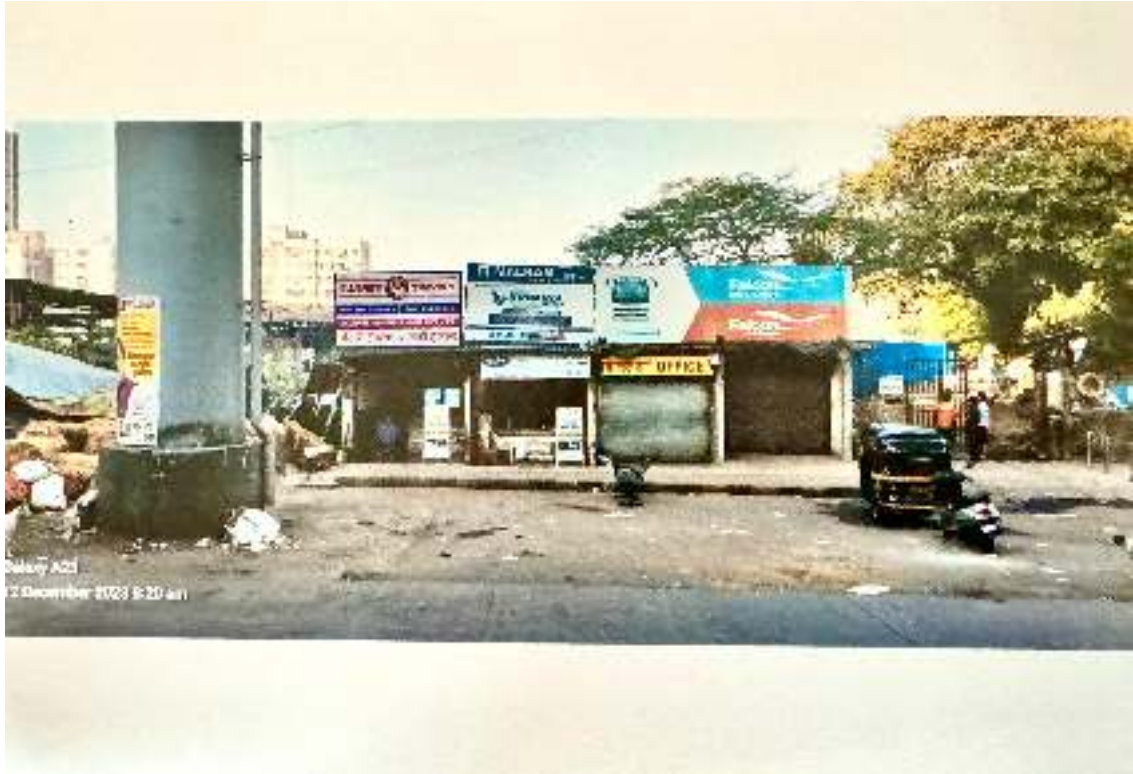
Yours faithfully

Ward Officer, R/North ward

14. There are several reasons why reliance on letter dated 31/12/1994 would not assist the case of Appellants. Firstly, the letter specifically states that the same was issued without prejudice to the status of the structures. This means that issuance of letter does not mean that structure covered by that letter was authorized. Secondly the area of the structure is shown as 10'8" X 16'9" plus opla of 16'9 X 7'3". The opla (platform) does not have roof and therefore, the exact area of covered structure was only 10'8" X 16'9" which is roughly 160 sq.ft. There are total 4 shops in the structure constructed by Ramsajiwan Tiwari. The total area of 4 shops is considered by the City Civil Court as 585 sq.ft. There is no explanation as to how small, covered structure admeasuring 160 sq.ft. with opla (platform) could expand to 585 sq.ft. upon shifting. The City Civil Court has therefore refused to believe that the shifting letter dated 31 December 1994 relate to any of the 4 shops.

Mr. Thorat has made attempt to suggest that the total area of 2 shops of the Appellants is about 278.75 sq.ft. which more or less matches with the area of covered structure with opla in letter dated 31 December 1994. This submission cannot be accepted in view of the fact that 4 shops form part of common structure. Appellants cannot selectively segregate area of their shop to establish connection with structure in the letter dated 21/12/1994. For better understanding of the exact nature of the 4 shops, photographs placed on record by Mr. Thorat and Mr. Vyas are incorporated below.





In above photographs, shops with signboards 'Gujrat Travels' and 'Patel Tours/Malkan' are the two suit shops. All four shops form part of singular structure. Therefore, Appellants' 2 shops cannot be segregated from the other 2 shops in occupation of Ramsajiwan Tiwari for the purpose of selective matching exercise with the area of structure reflected in letter dated 31 December 1994.

15. Notice dated 20 April 1995 issued under the provisions of Section 351 of the MMC Act to Ramsajiwan Tiwari is sought to be relied upon to suggest that the said notice was dropped after satisfying authorized nature of the structure by filing reply by Ramsajiwan Tiwari on 24 April 1995. Here again, the City Civil Court has refused to believe that the notice dated 20 April 1995 was in respect of the structure containing 4 suit shops. This finding is arrived at by the City Civil Court on account of difference in the area of structure in notice dated 20 April 1995 (954 sq.ft.) as against total area of 4 shops being

585 sq.ft. Similar is a position with regard to the assessment extract relied upon by the Appellants which appears to have been issued in respect of the shed and stable and not in respect of the suit shops.

16. Thus, none of the documents sought to be relied upon by the Appellants relate to the suit structure. It appears that Ramsajiwan Tiwari, who according to the Plaintiffs was given sub-tenancy of land admeasuring 1000 sq.yards (9000 sq.ft.), had possibly constructed several structures in respect of some of which the shifting letter dated 31 December 1994, notice dated 20 April 1995 and assessment extract appears to have been issued. Therefore, the said documents do not, in any manner, prove that the structure or suit shops are authorized.

17. Municipal Corporation has come up with a case that another Notice under Section 351 of the MMC Act in the past was issued to Ramsajiwan Tiwari in respect of the structure consisting of 4 shops on 8 June 2014. The said notice was challenged by Ramsajiwan Tiwari by filing Suit No.732/2015. The said suit was sought to be defended by Ramsajiwan Tiwari by relying on shifting permission dated 31 December 2014 and assessment extract. The City Civil Court refused ad-interim relief in Suit No.732/2015 by order dated 23 March 2015. On account of refusal of ad-interim relief, the Municipal Corporation demolished the entire structure of Ramsajiwan Tiwari. It is the case of the Municipal Corporation that Ramsajiwan Tiwari again reconstructed the structure consisting of 4 shops which was demolished in the year 2015. Though the Appellants have contested the said claim of Municipal Corporation by filing rejoinder, the order passed by the City Civil Court on 23 March 2015 in Suit No.732/2015 *prima facie* makes it default to disbelieve the stand taken by the Municipal

Corporation. It thus appears that the suit structure consisting of 4 shops has been reconstructed after its demolition in the year 2015.

18. There is no denial to the position that the existence of structures is coming in the way of execution of public project of construction of Metro work by MMRDA. In fact, the Municipal Corporation was required to issue notices on 7 July 2017 in respect of reconstructed structures on account of request made by the State Government (PWD) at the behest of MMRDA for carrying on demolition drive in respect of unauthorized structures abutting the Western Express Highway. In such a situation, grant of any temporary injunction to protect blatant unauthorized structures of Appellants affecting execution of public work is unwarranted.

19. Also of relevance is the fact that Ramsajiwan Tiwari, who occupied the other 2 shops in the structure had also instituted LC Suit No.89/2018 along with Appellants. For the reasons unknown, he has chosen to withdraw the suit on 6 September 2021. Thus, the so called 'landlord' of the Appellant is not interested in protecting the structure in which he has allegedly inducted the Appellants as tenants. This makes the case of the Appellants even more tough. On account of withdrawal of Suit by Ramsajiwan Tiwari, the two shops in his occupation will be demolished and therefore retention of two shops of Appellants forming part of same structure is otherwise not desirable.

20. Considering the overall conspectus of the case, I am of the view that no *prima-facie* case is made out by the Appellants for grant of any temporary injunction. They have also not satisfied the other twin tests of balance of convenience and irreparable loss. In fact, the

balance of convenience is heavily tilted against the Appellants who have stalled public work on account of existence of their unauthorized structures. The City Civil Court has rightly refused temporary injunction in favour of the Appellants.

21. I, therefore, do not find any merit in both the Appeals. They are dismissed without any order as to costs.

22. In view of disposal of Appeals, Interim Applications do not survive and the same are also disposed of.

(SANDEEP V. MARNE, J.)

23. After the order was pronounced, Mr. Thorat would request for continuation of interim protection operating in favour of the Appellants for a period of 4 weeks. The request is opposed by Mr. Vyas. Considering the fact that the interim protection is operating in favour of the Appellants for a long time, the same is extended by a period of 4 weeks from today.

(SANDEEP V. MARNE, J.)