

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5083 OF 2024

Vilas Muniraj Naidu

.. Petitioner

Versus

Pune Municipal Corporation & Anr.

.. Respondents

.....

- Mr. Samir A. Vaidya (appeared through VC) a/w Ms. Kaivalya Raul, Mr. Prathamesh Sarang and Ms. S. Nambiar for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 12, 2024

P. C.:

1. Heard Mr. Vaidya, learned Advocate for Petitioner appeared through video conferencing.

2. Present Writ Petition takes exception to the order dated 10.01.2024 passed in Misc. Civil Appeal (MCA) No. 32/21 passed by the learned District Court rejecting the Appeal filed by Plaintiff against Exh. 5 order dated 17.10.2020 passed by the learned Trial Court rejecting the Application seeking *status quo* in RCS No. 753/2020.

3. Mr. Vaidya would point out that one of the contentions raised by the Plaintiff is that the Defendant Municipal Corporation has not provided any information under the Right to Information Act to the Plaintiff with respect to similarly placed unauthorized constructions carried out by other plot owners on their respective plots and the Defendant Corporation has taken arbitrary action only against the tin

shed structure of the Plaintiff on the complaint being filed by the private Complainant. He would submit that the Plaintiff has been using the tin shed structure for more than 9 years and has also paid property tax to the Defendant Corporation which is the statutory body for collecting taxes. Hence he would submit that the notice under challenge in the present suit proceedings that the tin shed structure is an unauthorized construction is incorrectly issued to the Plaintiff.

4. Be that as it may, the question that would arise before the Trial Court who is going to determine and decide the suit proceedings would be whether the construction of the tin shed by the Plaintiff was constructed with the due permission of the Municipal Corporation or otherwise. Be that as it may, pleadings also reveal that certain Applications are filed by the Plaintiff seeking permission and / or even regularization of the tin shed structure which are still pending. Be that as it may, there are *prima facie* observations rather concurrent observations of the Trial Court and the Appellate Court against the Plaintiff's structure, but ultimately the Plaintiff would succeed or fail only on the basis of cogent material evidence that the Plaintiff would lead in support of his case in the suit proceedings. The observations and findings returned by the learned Trial Court and upheld by the learned District Court are *prima facie* based on the pleadings, averments and probably certain documents. Hence it is clarified by this

Court that the Plaintiff would be entitled to lead cogent material evidence and step into the witness box and prove his case in respect of the legality of the construction of the tin shed structure in accordance with law or any other right that may accrue to the Plaintiff in respect of the said construction strictly in accordance with law to enable the Plaintiff to maintain any Application for regularization of the same. It is clarified that the observations returned by the learned Trial Court in its order dated 17.10.2020 and the impugned order dated 10.01.2024 passed by the District Court are *prima facie* in nature and they will not preclude the Plaintiff from leading appropriate evidence and if done so, the learned Trial Court shall determine the Suit on the strength of the evidence led by the Plaintiff without being influenced by the *prima facie* observations in the aforementioned twin orders.

5. The order dated 10.01.2024 is sustained. It is once again clarified that all contentions of the Plaintiff before the learned Trial Court to lead appropriate and cogent evidence are expressly kept open. Suit shall proceed before the learned Trial Court.

6. With the above directions, Writ Petition is disposed.

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[MILIND N. JADHAV, J.]