

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1011 OF 2002

Shri Rameshkumar Bhikalal Thakur
Since deceased through legal heirs
Smt. Mona Rameshkumar Thakur & Ors.

: Appellants

Vs.

The Bombay Municipal Corporation of Gr.
Bombay & Ors.

: Respondents

Adv. Mohit Jadhav a/w Adv. Kajal Chourasia, for the Appellants.
Mr. Santosh Parad, for the Respondent/MCGM.
Adv. Aniket Ransubhe, for the Respondent No.3.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 10TH APRIL, 2024

PRONOUNCED ON : 8TH MAY, 2024

P.C. :

1. This appeal is by Original Plaintiff, whose Suit for declaration came to be dismissed with costs. Wherein he had prayed that the Suit notice dated 16th June, 1983 be declared as illegal, bad-in-law, void and ultra vires to the powers and functions of Defendant No.1/MCGM & that the notice is issued without any authority by the officers of Defendant No.1. It is further prayed that Defendants be restrained by an order of injunction from demolishing Shop No.8 being a Sweet Meat Shop situate at

the junction of S. V. Road and Maratha Colony, Opposite Madhina Manzil Dahisar (East), Bombay. The Defendant No.2 is said to be the owner of the Chawl. The Defendant No.3 is the a builder who had intervened in a suit.

2. For the purpose of convenience the parties are referred to as per their original status in the Suit. It is the case of the Plaintiff that the Claimant is occupying the suit shop since long. The Defendant No.1 issued a notice on 16th June, 1983 under Section 351 of the Bombay Municipal Corporation Act. The Plaintiff is having the documents such as permission granted by Tahsildar to repair the suit premises. There is a water connection given by the authorities to the shop which is let out by Defendant No.2 to the Plaintiff in the year 1969. There are rent receipts issued by Defendant No.2. Thus, it is the case of the Plaintiff that he is legally occupying the Suit property. The corporation could not have issued notice under Section 351 of the Act. Though the Plaintiff produced documents before the authorities, no cognizance of those documents is taken.

3. The Defendant No.1 opposed the Suit. It is the case of the Defendant No.1 that the Plaintiff has not produced any document to show that the construction is standing since prior to datum line i.e. 1964 in case of residential premises and 1962 in respect of commercial premises. The

Plaintiff has produced only a letter of 1978. There is no document prior to 1978 showing possession or the construction of the Suit premises. It is further stated that the notice was addressed to hut as per the documents produced by the Plaintiff, whereas in the suit premises is stated to be a shop. In the present case a notice is issued to a shop. The Plaintiff also has not produced any documents to show that the said structure falls in slum area and for this reasons also even the datum line is not applicable.

4. Though initially the Suit was filed only against Respondent No.1/MCGM and Respondent No.2 alleged owner of the premises, Respondent No.3/Defendant No.3 was added on its application for intervention.

5. The Trial Court on considering the evidence oral as well as documentary, held that the Plaintiff failed to prove that the structure is a legal structure and that he is legally occupying the suit premises. The Court framed three issues as to whether Plaintiff proved that his father acquired suit premises from Defendant No.2 in the year 1969 and his name is appearing the Suit premises. This issue is answered in favour of the Plaintiff. Second issue is as to whether Plaintiff No.2 that the Suit notice is illegal & bad-in-law. The said is answered in the negative. Third issue that as to whether the Plaintiff proves that the Suit is maintainable without

statutory notice under Section 527 of the Act. This issue is also answered negative & consequently judgment is passed.

6. Learned Advocate Mr. Jadhav vehemently argued the appeal. He submitted that the Plaintiff was given a notice dated 20th June, 1983 that itself was bad-in-law. On receipt of the notice he had replied the said notice on 26th June, 1983 and produced on record the documents. The said was not accepted by order dated 20th November, 1985. When the authority has failed to appreciate that the Tahsildar (ENC) Borivali II had granted the permission to repair the hut. This document is not considered in respect of Shop No.7 was not found to be satisfied. Shop No.7 was demolished and thus stated that cause of action to file a suit arose as at that time there was immediate apprehension of demolition and therefore no notice under Section 527 was necessary under the Act. He submits that when the Tahsildar had granted permission to repair the hut on 24th May, 1978 the authority ought to have accepted the structure has legal. Further the Plaintiff had relied upon the documents showing that even the water connection was given to the structure. Authorities have also not considered the same. The Plaintiff had also paid taxes to Corporation. He further submits that it is not the case of the Defendant/Corporation that the documents produced by the Plaintiff are forged & fabricated. If the

documents are not forged & fabricated those ought to have been accepted. It is further submitted that the Plaintiff should be given a chance to prove his case by remanding the matter to the Trial Court. The authorities be directed to pass a speaking order by considering the documents produced by the Plaintiff or by giving one more chance to produce documents. He also submits that the landlord supported the case of the Plaintiff.

7. Learned Advocate relied upon the Judgments in the case of *Motillal Mahadev Sharma & Ors. Vs. The Municipal Corporation of Greater Bombay*¹ & in the case of *Sopan Maruti Thopte & Ors. Vs. Pune Municipal Corporation & Ors.*² These Judgments will be considered at the later stage.

8. Learned Advocate for the Defendant No.1/MCGM submits that the first letter support of the Plaintiff's claim is of 1978. That even in the document of 1978 condition No.6 is that the structure should not be used for any other purpose except mentioned in the Identity Card. Condition No.8 is that the maximum height at the level shall be 8 subject to slope being provided to maximum height of 9 feet. In the present case, however, notice is given to a shop & not to a residential premises. The document of 1978 is in respect of some other premises. He submits that the Suit was also not within limitation as the notice was issued in 1983, whereas the

1 AIR 2005 Bom 344

2 AIR 1996 Bom 304

Suit was filed on 11th May, 1985. The Suit is not thus filed within six months of receipt of notice. After issuance of notice there was ample time to give notice to the Corporation under Section 527. The cause of action is only shown to avoid notice under Section 527. Section 527 provides that not suit shall be instituted against Corporation or against the Officers and authorities unless a one notice was given in writing and unless it is commenced within the six months next after the accrual of the cause of action. In the present case the Suit was not maintainable on those points of notice and also it was not filed within six months from the date of notice. He submits that the record is in respect of the hut. The Application for connection of water was made on 12th September, 1984 whereas the notice was issued on 14th June, 1983. Thus the application for water connection is made after issuance of the notice. The learned Advocate for the Corporation invited attention to the evidence of the Plaintiff's witness and the cross-examination. It is taken in the cross-examination that all the no documents are produced to show the area of the Suit shop is slum area. From the evidence of PW-3, it is argued that the record shows that the structure shown is of the hut. It is specifically brought on record from the witness for defendant, a junior engineer working with corporation that the documents produced by the Plaintiff were not sufficient prove any legal

right of Plaintiff over the suit structure or that suit structure is legal one.

9. Learned Advocate for the Corporation also further submits that the Plaintiff ought to have waited for the authorities to pass speaking order. He further submits that no documents were produced with the notice or even in the Court to establish legality of the structure.

10. In regard that the learned Advocate for the Appellants again submitted that the Defendant No.1 even now can issue fresh notice. The Suit was not based on a notice but was filed on as adjoining apprehension shops were demolished.

11. Thus, after hearing submission this Court considered the Judgments. The first judgment relied upon is in the case of ***Motillal Mahadev Sharma*** (supra) in the same judgment this Court has considered provision of Section 527. In that case the suit was dismissed as notice under Section 527 was issued. The Court however had considered that the Suit was filed for the protection of residential structure. However, the argument was negated and the judgment of dismissal of the Suit was upheld.

12. In the case of ***Sopan Maruti Thopte*** (supra) the division bench of this Court has laid down certain guidelines that the Municipal Corporation required to follow the procedure before taking action under

Section 351 of the B.M.C. Act. It was directed that the Corporation should provide 7 days time to show cause in case of demolition. However, it is seen that same was to be followed from 1st May, 1986. Para 19 of the said judgment reads as under:-

“19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations con situated under the B.P.M.C. Act would follow the following procedure before taking action under Section 351 of the B.M.C. Act or under S.260 of the B.P.M.C. Act.

- “(i) In every case where a notice under Section 351 of the B.M.C. Act/ under Sec. 260 of B.P.M.C. Act is issued to a party 15 days' time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.*
- “(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/Deputy Municipal Commissioner is communicated to the affected person.*
- “(iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.*
- “(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and or extension, if the same is reconstructed without valid permission within a period of one year, it would also be*

open to the Corporation to demolish the same by giving a short notice of 24 hours.

- (v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days' time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.*
- (vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall provide for 7 days' time to show cause in such a case."*

13. Thus this Court finds that the judgments are of noose for in the present case. The submission for the the reasons that the Appellants could not produce any documents on record. The water connection itself is applied after the Suit notice was issued and not prior to that. This clearly shows that the Appellant has not proved that the structure is authorized. The documents showing that the Appellants had paid taxes to the Corporation is of no use as it is well settled that the payment of taxes is not document of title or ownership. There is no document shown prior of datum line about the existence of this structure. The rent is issued by the landlord/Defendant No.2 cannot be taken as a proof of authorized structure. When the landlord himself does not any title over the Suit property, the tenant inducted by such landlord also can not get any benefit.

14. Considering all the above, this Court finds that there is no merit in the Appeal and it must fail. Hence the following order.

ORDER

(a) The Appeal is dismissed with cost.

(KISHORE C. SANT, J.)

After Pronouncement

15. At this stage Learned Advocate for the Appellants prays for extension of interim relief which was running pending the Appeal.

16. The same is extended by six weeks.