

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.177 OF 2024
WITH
INTERIM APPLICATION NO.1968 OF 2024
IN
APPEAL FROM ORDER NO.177 OF 2024**

The Municipal Corporation of Greater
Bombay, a Statutory Corporation
incorporated under the provisions of
the Bombay Municipal Corporation Act
having their office at Mahapalika Marg
Mumbai 400001

: Appellant
(Orig. Defendant)

Vs.

Ramlingam Narayan Padiyachi
Age:- 75 years, Occp:- Business,
Founder of Ramlingam Educational
Foundation having its Address:-
Nimomi Baug Raod, Duta Nagar,
Govandi, Mumbai- 400 043.

: Respondent
(Orig. Plaintiff)

Mr. Karan Bhosale a/w. Ms. Seena Rawade for the Appellant.
Mr. Prashant Pandey a/w Mr. Dinesh Jadhvani and Mr. Pravin
Kumar Jadhav i/b Mr. Satish Kumbhar for the Respondent.
Mr. Nikhil Kirtane, Mr. Tushar Jadhav, Junior Engineer, S.W.M.
BMC present.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 5th SEPTEMBER, 2024

PRONOUNCED ON : 22nd OCTOBER, 2024

JUDGMENT :

. The aforesaid Appeal impugning an Order dated 19th
December, 2023 passed by the learned Judge of the City Civil

Court, Greater Bombay, thereby Notice of Motion No.3802/2023, in L.C. Suit No.2497/2023, is allowed. (Hereinafter the parties are being referred to by their status in the suit i.e., Appellant as “*Defendant No.1*” and Respondent as “*Plaintiff*”.)

2) Heard learned Counsel Mr. Bhosale with Ms. Rawade for Appellant and learned Counsel Mr. Pandey for Respondent. Perused the record.

3) Rule. Rule made returnable forthwith and heard finally with consent of the parties.

4) The case of Plaintiff is that, a ‘toilet block’ known as ‘Sagar Shouchalaya’, situated at 55, Durgadevi Mandir, Sant Tukaram Marg, Iron Market, Chinchbunder Road, Mumbai is used for public purpose (*‘the suit premises’*, for short). The suit premises is constructed with prior permission and no objection of Defendant No.1, on a open piece of land that Defendant No.1 sanctioned to the Plaintiff *Vide* letter bearing No.AH5/1018/03, dated 22nd June, 1998. Since then, all the relevant documents of the suit premises are in the name of Plaintiff and he has been legally occupying the same.

4.1) That, the Plaintiff had issued a letter dated 3rd May, 2023 to the Defendant No.1 as well as the local Police Station and

thereby requested the said authorities to take legal action against Renuka Poojari and Suri Poojari for they made an illegal and unauthorized toilet construction in the water tank and the drainage line area of the suit premises. The Plaintiff also issued a legal Notice dated 23rd June, 2023 to the Defendant No.1 and requested to demolish the said illegal toilet. However, the Defendant No.1 failed to take any legal action against said Renuka Poojari and Suri Poojari. Therefore, the Plaintiff filed a Long Cause Suit No.1721/2023 along with a Notice of Motion.

4.2) It is averred that, in the meanwhile, the Defendant No.1 issued a Notice dated 22nd June, 2023 to the Plaintiff alleging that the Plaintiff has made an illegal construction on the terrace of the suit premises. On 26th June, 2023, the Plaintiff replied the notice and denied the allegations therein. However, the Defendant No.1 issued another Notice dated 11th September, 2023 bearing No.ACB/A.E./B/2890/SWM, alleging that the Plaintiff has made an unauthorized construction on the terrace of the suit premises, thus, the Plaintiff has violated the conditions specified in the work order 19th September, 1997, therefore, the Plaintiff shall vacate the suit premises and hand over its possession to the Defendants, within 24 hours from the receipt of said notice. As a result, the

Plaintiff filed the said L.C. Suit No.2497 of 2023, contending that the notice dated 11th September, 2023 is illegal; that the Plaintiff has not carried out any illegal work, structural addition or alteration in the suit premises, contrary to the provisions of the MMC Act; that the Defendants have not followed the due process of law; and that the notice was the result of some political influence and hence said notice is not maintainable in law. On this premise, the Plaintiff prayed for the reliefs that, the Notice dated 11th September, 2023 be quashed and set aside; that pending hearing and final disposal of the suit, execution and operation of the Notice dated 11th September, 2023 be stayed; and that, by grant of permanent injunction, the Defendants be restrained from vacating the suit premises and taking its possession etc. Yet, the Defendant No.1 took forcible possession of the suit premises on 13th October 2023. Therefore, the Plaintiff filed the Notice of Motion No.3802/2023.

5) The Defendants resisted the Notice of Motion by filing their reply. The Defendants contended that by a notice dated 14th October, 2020, the Plaintiff was informed to produce the papers of permission etc., regarding the illegal construction. Meanwhile, further action could not be initiated due to Covid-19 Pandemic.

That, complaints were received to the site supervisory staff of SWM Department, 'B' Ward regarding cleanliness and upkeep of the suit premises. In turn, the site supervisory staff visited there on many occasions and instructed to improve the cleanliness and upkeep the suit premises. A meeting was held on 14th June 2023, in the Chairmanship of Assistant Commissioner, B Ward. The operators of 'Pay and Use Toilet Blocks', present in the meeting were instructed to carry out a structural stability audit, improve cleanliness and cater to all the parameters as per the guidelines of the "*Swacha Bharat Abhiyan*" and submit a report in 15 days.

5.1) It is contended that, on 20th June 2023, Assistant Commissioner, 'B' Ward along with the staff of the Maintenance and SWM Department inspected the suit premises. It was found that, the Plaintiff has carried out an unauthorized work on the terrace of the suit premises, therefore, instructions were given to the Maintenance and SWM Department to take a joint action and submit the report. Accordingly, a notice was issued on 22nd June, 2023 to the Chairman/Secretary of the Plaintiff's foundation, as regards the unauthorized construction and calling upon Plaintiff to submit the relevant documents to prove the authorization of the work on the terrace. The Plaintiff, however, failed to submit the

required documents proving that the construction is authorized, and thus, he failed to comply that notice within time. Thereafter, the SWM Department issued a Notice dated 11th September, 2023. It is contended that the Plaintiff has violated the conditions specified in the work order No.AHS/B/2826/IO dated 23rd October, 1997. Thereafter, the Plaintiff failed to vacate the suit premises. Therefore, Defendant No.2 initiated an action for taking possession of the suit premises with prior approval of the Deputy Municipal Commissioner, Zone-I. However, to avoid discomfort to public, SWM Department invited EOI to appoint agency for a temporary period of 60 days for the operation and maintenance of the suit premises. In turn, *M/s. Harshal Samajik Seva Sanstha* was appointed for the said purpose. The SWM Departments shall invite EOI by following BMC procedure to appoint a new agency for carrying out the operation and the maintenance of the suit premises. The Plaintiff has gained the profits from the suit premises, however, failed to maintain cleanliness and to keep the conditions of the work order. Therefore, and the Defendant No.1 being landlord of the land, the action taken by the Defendants is correct and valid. In the backdrop, the Defendants contended that the Notice of Motion shall be dismissed with costs.

6) In view of the rival pleadings and the documents produced on record by the parties, the trial Court considered the three points i.e. whether the Plaintiff has made out a *prima facie* case; that, whether balance of convenience lies in favour of the Plaintiff; and that, whether the Plaintiff will suffer irreparable loss, if interim relief by way of restoration of possession of the suit premises is not granted, as prayed for. On appraisal of the contentions in the light of the documents on record, the Learned Judge of the trial Court answered the aforesaid points in affirmative and directed as under :-

“The defendants are hereby directed to restore the possession of suit premises situated at ‘Sagar Shouchalaya’, 55, Durgadevi Mandir, Sant Tukaram Marg, Iron Market, Chinchbunder Road, Mumbai within a period of 45 days from the date of this Order, pending the hearing and final decision of the suit.

Further, the defendants are temporarily restrained from executing and operating the impugned Notice dt. 11/09/2023 and 5/10/2023 and from taking possession of the suit premises from the Plaintiff, till the decision of the suit.”

7) I have carefully considered the submissions made by learned Counsel Mr.Bhosale for Defendant No.1 and Learned Counsel Mr.Pandey for the Plaintiff and documents highlighted.

8) Learned Counsel Mr. Bhosale for Appellant submits that, earlier, the Plaintiff had submitted the Structure Audit Report of November, 2018. At the time of said report the terrace was open and in good condition. However, when the Plaintiff submitted the construction plan of the suit premises, he showed a provision of a servant room on the terrace. This was in violation of the conditions of the land allotment and the license to use the same *vide* letter dated 24th October, 1997. Then, the Plaintiff made the unauthorised construction mentioned in the subject notices dated 22nd June and 11th September, 2023. Since, the Plaintiff failed to comply the notice dated 22nd June, it was followed by the short notice dated 11th September. Thus, the suit premises were lawfully taken in possession by the Defendants. On instructions from the Assistant Engineer (Solid Base Management), the learned Counsel submits that after taking possession of the suit premises, the subject unauthorised structure was demolished by the Defendants. He submits that, on issuance of the notice dated 22nd June, 2023 and on account of its non-compliance within the stipulated 2 days period, the license contract between the Plaintiff and the Defendant No.1 had come to and end. On cancellation of the license, the possession of the Plaintiff over the suit premises

was illegal, therefore, there was nothing wrong on the part of the Defendants to take the possession of the suit premises acting on the notice dated 11th September. In fact, on failure of the Plaintiff to comply the notice dated 22nd June the Plaintiff had no semblance of any right to continue in the suit premises. Therefore, neither the Plaintiff can retain his possession or ask for its protection nor he can seek its restoration. As such, the Defendants were entitled to get back the possession of the suit premises. This legal aspect has been not considered by the trial Court while passing the impugned Order. Hence, the impugned Order is illegal and liable to be set aside. To support his submissions, learned Counsel Mr. Bhosale has relied on following decisions :-

1. General Merchant Association & Ors. vs. The Corporation of Chennai¹ wherein it is held that “... the position of a license after termination becomes unlawful and the licensee is not entitled to any injunction restraining the licensor from evicting him as unlike a tenant a licensee does not have judicial possession and the possession always remains with the licensor and what was granted is a privilege in terms of the license, which is the absence of such a grant becomes unlawful.”

1 1998 SCC Online Mad.848

2. *Samarpan Varishtha Jan Parisar & Ors. Vs. Rajendra Prasad*

Agarwal & Ors.² In this case, in paragraphs 12 and 13 it is held as under :-

“12. Law recognizes three types of possession. One as that of an owner, including co-owners; second as a tenant, when a right is created in the property; and thirdly permissive possession, the possession which otherwise would be illegal or that of as a trespasser. In the present appeal, we are concerned with the possession falling in third category. This Court in a judgment reported as ***Associated Hotels of India v. R. N. Kappor*** has held that in case of a licensee, the legal possession continues with the owner as in terms of Section 52 of the Indian Easements Act, 1882, grant of a mere right to do upon the property of another, something which would in the absence of such right be unlawful. Thus, this is the essential characteristic which distinguishes a license from a lease.

13. In ***Sohan Lal Naraindas v. Laxmidas Raghunath Gadit***, it has been held that a lease creates an interest in the property whereas a license creates no estate or interest in the immovable property of the grantor. It was held as under:

‘8. A licence confers a right to do or continue to do something in or upon immovable property of grantor which but for the grant of the right may be

² AIR 2022 SC 2209

unlawful, but it creates no estate or interest in the immovable property of the grantor. A lease on the other hand creates an interest in the property demised’.”

9) Learned Advocate Mr.Pandey for the Respondent submits that, whatever process of documentation was undertaken by the Defendants before taking possession of the suit premises, it was without recording panchnama, map and dimensions etc. of the alleged illegal construction. The subject notices were issued without mentioning the statutory provisions which prescribe the procedure and permit taking possession of the suit premises. Therefore, entire action of taking possession of the suit premises by the Defendants was illegal and it finally constrained the trial Court to pass the interim mandatory injunction Order. He submits that the impugned Order is based on factual matrix of the case, well reasoned and it is in accordance with law. As such, there is no substance in the Appeal.

10) It is admitted fact that in the year 1998, the Plaintiff was allotted the piece of land. Thereafter the Plaintiff constructed the suit premises-toilet block thereon with prior permission and approval of the Defendant No.1. Thus, the suit premises has been existing since long. The allotment of the piece of land was subject

to the Plaintiff abide by all the terms and conditions of Defendant No.1 as in force from time to time and, that in case of complaint received in the future about bad maintenance of the suit premises/ PSC (public sanitary convenience), the Defendant No.1 reserves the right to revoke the permission at any stage and at any time.

11) The first reason for taking possession of the suit premises by the Defendants is that there were complaints of improper cleanliness an upkeep of the suit premises and the unauthorised construction.

12) However, it is significant to note that the meeting under the Chairmanship of Assistant Commissioner, B Ward with the operators of 'Pay and Use Toilet Blocks' was held on 14th June 2023 i.e. just 8 days before the notice dated 22nd June 2023, and in that meeting only, the operators present were instructed to carry out structural stability audit, improve cleanliness and cater to all the parameters as per the guidelines of the "*Swacha Bharat Abhiyan*" and to submit the report within 15 days. However, it is not the case of the Defendants that after that meeting, during the said 8 days period there were written complaints against the Plaintiff raising the issue of cleanliness and upkeep of the suit premises. There is no mention in the reply of the Defendants

before the trial Court, of having received such complaints from any specific person and on a specific date, prior to 14th June, 2023 and till 22nd June, 2023. There are no details as to exactly on which date the concerned supervisory staff of the SWM department visited the suit premises for inspection there to verify the veracity of the said complaints. Even no details are stated in the said reply as to how the Plaintiff failed keep the suit premises clean and well maintained.

13) Admittedly, the Plaintiff was constantly earning from the suit premises. Therefore, it is highly improbable that the Plaintiff would give a scope for the complaints about cleanliness and upkeep during that 8-day period, at the cost of loosening the suit premises. As such, *prima facie* there is no substance in the contention of Defendants that there were complaints of cleanliness and upkeep of the suit premises.

14) The notices dated 22nd June, 2023 and 11th September, 2023 alleges that the Plaintiff has made an unauthorized construction over the terrace of the suit premises. However, the said notices do not claim that any panchnama and map of the alleged unauthorised construction were recorded. Even the said notice does not state the exact size of the illegal construction.

Thus, in short the said notices are as vague as possible. There is no explanation as to how and when the debris disposed of, post demolition. Therefore, *prima facie* the notices are insufficient to accept that the Plaintiff had made the alleged unauthorised construction.

15) No doubt the letters of the years 1997 and 1998 clearly state that, if the Plaintiffs commits breach of the terms and conditions of the Defendant No.1, the latter will be entitled to take possession of the suit premises. However, it is not sufficiently clear from the contentions of the Defendants as to how the legal procedure was precisely followed before they obtained the possession of the suit premises.

16) In the above context the observation of the trial Court in the impugned Order are significant. That, by a complaint dated 3rd May, 2023 the Plaintiff had raised the issue of unauthorised construction on the roof of adjacent Durgadevi Temple which construction interfered in the water tank and drainage line area of the suit premises. It was followed by a notice dated 25th May, 2023, under Section 314 of the MMC Act, issued to the owner of Durgadevi Temple. Then, by Order dated 12th June 2023, action was initiated for demolition of the unauthorised construction,

near the suit premises. It is noted that initially this suit was filed along with the Notice of Motion No.3538/2023 to restrain the Defendants from acting on the notice dated 11th September 2023. This Notice of Motion was taken out on 26th September 2023, with prior service of copy of Plaint and Notice of Motion to the Defendants on 15th September, 2023. The notice about ad-interim hearing was served upon the Defendants on 18th September 2023, informing that the matter is kept for hearing on 26th September, 2023. Thereafter, the Notice of Motion No.3802/2023 was taken out on 18th October, 2023. However, the Defendants took the possession of the suit premises on 13th October, 2023. Therefore, the trial Court noted that even though it was apparent that the matter is *sub-judice*, the Defendants have obtained forcible possession of the suit premises by virtue of the notice dated 11th September, 2023. No doubt, the alleged notice dated 14th October 2020 was issued to the Plaintiff towards alleged ongoing illegal construction at the suit premises. However, there is no justifiable explanation for failing to act upon that notice in a reasonable time.

17) The notices issued to the Plaintiff were not preceded by notices under Section 351 or 354A of the MMC Act. There is no material on record showing that before taking possession of the

suit premises, 'hearing opportunity' was given to the Plaintiff by the Defendants, meaning, the 'principle of natural justice' was not followed. Therefore, the trial Court is absolutely correct in holding that the entire act of the Defendants is high handed and there was no regard for the Court of justice before taking possession of the suit premises. As such, there was a fit case to allow the Notice of Motion by the impugned Order to grant the interim relief in the mandatory form.

18) In view thereof, there is no substance in the aforesaid Appeal and it is liable to be dismissed. Hence, following Order :-

18.1) Appeal from Order is dismissed. Rule is discharged.

18.2) As a result the Interim Application No.1968 of 2024 does not survive and its stands disposed of, accordingly.

(SHYAM C. CHANDAK, J.)