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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 496 OF 2024
WITH
INTERIM APPLICATION NO. 10144 OF 2024
IN
APPEAL FROM ORDER NO. 496 OF 2024**

Sudeep Cooperative Housing Society Ltd. .. Appellant

Vs.

Municipal Corporation of Greater Mumbai .. Respondent

.....
Mr. Bipin Joshi a/w Ms. Sakshi Agarwal for the appellant
Ms. Seema Rawade for the respondent – MCGM
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

**CLOSED ON : 5th JULY, 2024.
PRONOUNCED ON : 10th JULY, 2024**

P.C.

1. By this appeal, the appellant – plaintiff challenges an order dated 10th May 2024 passed by the City Civil Court dismissing the Notice of Motion.

2. Heard learned Counsel for the appellant as well as the learned Counsel for the respondent – MCGM.

3. The appellant is a Co-operative Housing Society. It has filed a suit in the City Civil Court bearing L.C. Suit No. 836 of 2023 *inter alia* moved an application seeking temporary mandatory injunction directing the respondent to construct compound wall on both sides and watchman cabin or in the alternative, permission to reconstruct the compound wall with watchman cabin with similar size and materials.

4. Essentially, a suit has been filed challenging a Notice under Section 299 of the Mumbai Municipal Corporation Act (for short M.M.C. Act) dated 10th February 2023 and an order dated 4th March 2023. When the trial Court refused ad-interim relief, the appellant approached this Court by way of filing an appeal against the said order. Meanwhile, the respondent demolished the compound wall and watchman cabin. The appellant again preferred an appeal against the said order. This Court in the first round of appeal against an order, directed to maintain status-quo *inter alia* asking the appellant to make necessary amendment in the plaint and to file a fresh Notice of Motion after amending the plaint. While relegating the parties back to the trial Court, it has been observed by this Court that whether the structure which has been demolished

and which then existed in area which was sought to be acquired for road widening, the first structure occupied by the building or independent structure external to the building is required to be determined only during trial on the basis of pleadings and material on record.

5. Admittedly, the structure in the form of compound wall and watchman cabin has already been demolished by the respondent – Corporation. Learned Counsel for the plaintiff would argue that the correct position of the entire building and its basic necessities like water connection, gas pipeline, underground water tanks, drainage tanks, bore well, storm water drain, parking facilities are shown in the photographs while amending the plaint. Learned Counsel would also argue that safety and security of the building and vehicles as well as occupants are in danger due to *malafide* action of respondent. There is no open space for maneuvering in as much as the building abuts the road on front side and also at the corner of building where turning of the road is there at right angle to the existing road. The security cabin is not coming within the purview of Section 299 of the M.M.C. Act.

6. On the other hand, learned Counsel for the respondent, at the outset, questions the maintainability of the suit for want of a statutory Notice under Section 527 of the M.M.C. Act. Admittedly, no such Notice appears to have been issued by the appellant before instituting a suit. The suit, therefore, must fail on that ground itself. The second objection raised on behalf of the respondent is that the plaint does not disclose cause of action.

7. The stand of the respondent – Corporation is that a 9.15 meters wide RL has been sanctioned by the Municipal Commissioner in view of Section 297(1)(b) of the M.M.C. Act. Accordingly, suggestions / objections were called for. An advertisement was published in local newspaper and the Government Gazette. Pursuant to the same, the respondent received suggestions / objections from the stake holders. The appellant had also submitted its objections through its advocate on 27th April, 2021. However, the same has not been accepted by the respondent considering it to be a public project. According to the respondent – Corporation, the objections of the plaintiff exhibited society's interest rather public interest of widening the road. The show-cause Notice has been duly replied by the appellant.

8. Having considered the reply, the respondent – Corporation passed final order directing the appellant to comply with the requisites of Notice dated 10th February 2023. The respondent – Corporation thereafter had taken an action against land not occupied by the building and demolished the compound wall which was an obstruction for the project of road widening. It is specifically contended by the respondent – Corporation that the structure under reference was the only hurdle remained in road widening and the same was demolished on 23rd March 2023.

9. It is also the contention of the respondent – Corporation that in view of the provisions of Section 20A and 41(ha) of the Specific Relief Act, the appellant is not entitled to seek any injunction. Section 41(ha) of the Specific Relief Act reads thus :-

“41. *Injunction when refused.* - An injunction cannot be granted --
(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.”

10. The learned trial Court having considered all the documents

on record and having given an opportunity of being heard to the respective Counsel, held that the appellant failed to establish a *prima facie* case. The balance of convenience does not tilt in favour of the appellant and in case injunction is refused, the appellant would not suffer irreparable, much less, loss which cannot be compensated in terms of money.

11. Merely because the building of the appellant has been constructed as per the plan sanctioned by the respondent – Corporation itself in the year 2016, would not *ipso facto* mean that the respondent cannot demolish the compound wall and watchman cabin if it requires for a public project namely widening of the road. The respondent – Corporation is justified in view of the provisions of Section 299 of the M.M.C. Act in demolishing the compound wall and watchman cabin, which they did by following due process of law. Section 299 of the M.M.C. Act reads thus :-

“299. Acquisition of open land or of land occupied by platforms, etc, within the regular line of a street

(1) If any land not vesting in the corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform,

verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is within the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven clear days' written notice of his intention so to do, take possession on behalf of the corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thenceforward be deemed a part of the public street.

*(2) **Provided** that, when the land or building is vested in [the Government] possession shall not be taken as aforesaid without the previous sanction of the Government concerned and, when the land or building is vested] in any corporation constituted by Royal Charter or by an Act of Parliament, [of the United Kingdom] or [by an Indian Law,] possession shall not be taken as aforesaid without the previous sanction of [the State Government].”*

12. The stand of the respondent – Corporation that the compound wall and watchman cabin is not occupied by the building and is a structure external to the building abutting on the public

street, appears to be correct.

13. The trial Court has, therefore, rightly placed useful reliance on two decisions of the Apex Court; (i) ***Mahanagar Telephone Nigam Ltd. (EAST-I) Vs. The Assistant Commissioner*** (Civil Appeal No. 6745 of 2009) and (ii) ***Municipal Corporation of Greater Mumbai & Anr. Vs. Bhandup Amber Co-operative Housing Society Ltd. Mumbai*** (Appeal from Order No. 595 of 2018), in which it is held that except the main structure, other structures, which are not part of the main building, which even if standing on the land, possession can be taken of the said land by issuing notice under Section 299 of the M.M.C. Act. The appellant is always at liberty to establish the aforesaid facts on the basis of his pleadings and the evidence which would be adduced on merits during trial. The respondent – Corporation had already demolished the compound wall and watchman cabin for the purpose of road widening, which is a public project and, therefore, I do not find any reason to interfere in the impugned order which has been passed by taking into consideration the entire material on record by the trial Court.

14. As already stated, apart from the well known three aspects of

prima facie case, the balance of convenience and irreparable loss, the trial Court has rightly enunciated that in view of Section 20A of the Specific Relief Act, injunction cannot be granted by a Court in a suit under the said Act involving a contract relating to an infrastructure project specified in the schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project. The trial Court has further referred Section 41(ha) of the Specific Relief Act which provides that injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provisions of the relevant facility related thereto or services being the subject matter of such project.

15. Consequently, the Appeal against Order is devoid of any substance and hence, stands dismissed. Pending application/s if any, also stand dismissed.

16. The appellant is at liberty to get his rights adjudicated on merits during trial.

17. The appeal stands disposed of in the aforesaid terms with no order as to cost.

(PRITHVIRAJ K. CHAVAN, J.)

18. After pronouncement of the order, learned Counsel for the appellant prays for interim status-quo.

19. Request is rejected.

(PRITHVIRAJ K. CHAVAN, J.)