

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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APPEAL FROM ORDER NO. 750 OF 2024
WITH
INTERIM APPLICATION NO. 14141 OF 2024

Smt. Shashikala Ashok Magdum & Anr ..Appellants/Applicants
V/s.
Municipal Corporation Of Greater
Mumbai L-Ward .. Respondent

APPEARANCES ON 06.12.2024 :

Mr. A. Y. Sakhare, Senior Counsel a/w. Mr. Rohan Mirpury i/b. Mr. Sandeep Dhuri for the Appellants/Applicants.
Mr. Drupad Patil a/w. Mr. Om Suryawanshi & Mr. Anand Khairnar i/b. Ms. Komal Punjabi for the Respondent – MCGM.
Mr. Ganesh Deshmukh (J.E.) Building & Factory Department, “L” Ward present.
Mr. Sanjay Dudhabate, A.E.(B&F) Department “L” Ward present.

APPEARANCES ON 09.12.2024 :

Mr. Rohan Mirpury i/b. Mr. Sandeep Dhuri for the Appellants/Applicants.
Mr. Drupad Patil a/w. Ms. Seena Rawade for the Respondent – MCGM.

CORAM : M.M. SATHAYE, J.

DATE : 9th DECEMBER, 2024

P.C. :

1. Heard learned senior counsel for the Appellants/Applicants and learned counsel for Respondent-Municipal Corporation

extensively on 06.12.2024. The matter is placed today for passing order.

2. The appeal is filed challenging the refusal of ad-interim relief by the impugned order dated 27.09.2024 passed in Draft Notice of Motion in S.C. Suit No. 6177 of 2024 by City Civil Court for Greater Mumbai. The suit is filed challenging impugned notice issued by Respondent – Corporation U/s. 351 of the Mumbai Municipal Corporation Act, in respect of suit structure, admeasuring 1600 sq. feet, consisting of ground + one storey, made up of B.M. Walls and M.S. angles/channels, ladi coba slab, situated at CTS No.91, Bhupal Niwas at Laxmi Narayan Mandir Compound, Mohili Village, Sakinaka, Mumbai – 400 072.

3. At the outset, it is material to note that impugned notice is dated 04.01.2023, suit is filed on 23.09.2024 and ad-interim was refused on 27.09.2024. Therefore, it is clear that the impugned notice is challenged after a period of about 1 year and 8 months. This itself indicates that the impugned notice did not really matter to the Appellants.

4. This case seems to have a rather peculiar history.

5. The Appellants' cousin one Mr. Samit Shantaram Adure had filed Writ Petition No. 2761 of 2016 against Respondent Municipal Corporation and the present Appellants. The said writ petition was disposed of by Division Bench of this Court, after hearing the Respondent – Corporation as well as present Appellants, by the Order dated 19.12.2019 thereby directing that in the event fresh

complaint is filed by the said Mr. Samit Shantaram Adure & another within a period of 4 weeks then Respondent – Corporation was directed to take action in accordance with law in case it finds illegal or unauthorized constructions on the subject matter land therein, including present suit structure situated on CTS No.91. It appears that the Municipal Corporation did not take action as per the said Order of this Court and therefore, the said Samit Shantaram Adure filed Contempt Petition bearing No. 41 of 2021 which was heard by the Division Bench of this Court on 19.09.2024. It is material to note that the present Appellants were duly represented by a lawyer and after hearing the Municipal Corporation and the present Appellants, this Court observed that even discounting the period spent during Covid-19 pandemic, there is no explanation for delay in action for almost 17 months between January 2023 and September 2024. The Division Bench directed the Respondent – Corporation to execute the demolition Order dated 05.09.2024 unless there is any legal impediment to doing so. It is therefore, obvious that the matter had proceeded after the present impugned notice of 04.01.2023 up to the stage of demolition Order dated 05.09.2024. It is observed in the said Order (19.09.2024) that the Commissioner of the Respondent – Corporation must assign responsibility for non-compliance to the officers and recover the cost imposed from them personally. Ultimately, contempt petition was disposed of. However, considering the background, the Division Bench of this Court directed the Respondent – Corporation to file and serve a compliance report together with photographs on 10.10.2024.

6. It is therefore clear from the above dates and Orders passed by this Court that, it is only after the contempt petition was disposed of on 19.09.2024 that the present suit is filed on 23.09.2024.

7. Therefore, apparently, on the face of the record, the present suit is filed challenging an old impugned notice, when it became clear to the Appellants that demolition of the suit structure is inevitable and imminent.

8. Perusal of the impugned Order shows that the learned Trial Judge has considered the history including Order passed by this Court on 19.09.2024 in contempt proceedings and direction given thereunder to execute the demolition Order dated 05.09.2024.

9. This Court was moved urgently on 24.10.2024, when notice was issued to Respondent – Corporation and thereafter on 19.11.2024 when reply of the Respondent – Corporation was called for. Under Order dated 19.11.2024 the Respondent - Corporation was also directed to verify whether the suit structure is within declare slum area.

10. On 02.12.2024 this matter was again moved urgently on the pretext that reply is not yet filed by the Respondent – Corporation and that Corporation is likely to carry out demolition on that date, and ad-interim was pressed and this Court directed Respondent – Corporation not to take coercive steps until next day – 03.12.2024. The matter could not be taken up on next day and therefore, was kept on 06.12.2024 and the ad-interim protection granted, just for a day, was extended. It is in this backdrop, that the appeal is being

pressed urgently today.

11. The Respondent Municipal Corporation has filed Affidavit in reply dated 03.12.2024 opposing grant of any relief to the Appellants. Court case history of writ petition and contempt petition is narrated. It is placed on record that due process is followed and Appellants have not produced any permission / approved plan / sanction to the suit structure. It is categorically stated that Appellants have failed to produce photopass which is necessary for protection in slum area. It is placed on record that by order dated 14.10.2024, Division Bench of this Court, in contempt proceedings, had directed the local police station to give requisite police protection, including support from SRPF if needed, to Respondent Municipal Corporation for carrying out demolition of the suit structure.

12. In this factual backdrop, this Court will have to consider the refusal of ad-interim relief by the City Civil Court under impugned Order.

13. Learned senior counsel for the Appellants, relied upon an additional affidavit on behalf of the Appellants, filed on 03.12.2024 alongwith certain documents annexed (filed after the impugned Order). It is material to note here and now itself, that the documents produced along with this additional affidavit were obviously not before the Trial Court because there are filed first time in this court.

14. Learned counsel for the Appellants was repeatedly asked by the Court, as to how this Court hearing an Appeal from Order can consider the documents which are not produced before the Trial

Court and produced first time in this Court. Learned counsel for the Appellants insisted that even such documents must be considered by the Court.

15. First document relied by the Appellants is claimed to be a true copy of a map produced at page 5 of the additional affidavit dated 03.12.2024. This document indicates that it is not a true copy, duly signed by any authority. The alleged seal appearing thereon does not appear genuine. The stamp of true copy simply indicates that Sd/- is written and there is no signature. In such circumstances, the said document does not prove anything.

16. Second document relied upon by the Appellants is an Order dated 15.04.1970 passed by Deputy Collector of the concerned area produced at page 6. It is apparent from the said Order that it was passed when CTS No.91 was used for NA purpose for construction of residential structures 'since 1965'. It is therefore obvious that this document also does not indicate that the suit structure was tolerated prior to datum line i.e. 17.04.1964 and hence, does not help the case of the Appellants.

17. The third document relied upon the Appellants, is a map, of which certified copy is issued in September 1974. This map also does not indicate as to when the said structure was actually constructed and whether it was in existence prior to cut off date of 1964, so as to make it tolerated structure. This document also does not indicate existence of ground + 1 storey.

18. Thereafter, learned senior counsel for the Appellants relied

upon an affidavit in rejoinder dated 05.12.2024 (again filed after the impugned order is passed) alongwith a slum Notification dated 02.11.1989 indicating that CTS No.91 on which the suit structure is situated was declared as a slum area. Relying on a Notification dated 16.05.2015, it is contended that if a structure is situated in slum then it is protected. Perusal of the said notification shows that the protection is subject to Appellants producing one of the list of documents. The Appellants are relying upon the property being converted to N.A. and therefore, a receipt from revenue department showing payment of N.A. use or regularization, is one of the documents that will protect the suit structure. Admittedly, the Appellants have not produced such receipt of N.A. permission or N.A. regularization before the Trial Court when the impugned Order was passed. No photopass is produced. Therefore this notification also does not help the Appellants.

19. If the dates mentioned above are considered carefully, it is obvious that many documents which this Court is called upon to look into, were not shown to the Trial Court and therefore considering what is observed above, no fault can be found with impugned Order, refusing ad-interim relief.

20. Even considering the documents relied upon by the Appellants for the first time in this Court, the case of the Appellants about suit structure being tolerated or being authorized or being protected under slum notification, appears to be not supported. No document granting municipal sanction to the suit structure is produced. Everything else is pressed into service.

21. The Appellants were party to both the writ petition and contempt petition and were fully aware of the orders of this Court. They were also aware of their litigation with cousin Samit. The Appellants are the litigants who file proceedings when it suits them, and when it becomes evident and clear to them that the demolition of their structure is imminent and then call upon the Courts to take up the matter immediately / urgently thereby taking precious judicial time. Documents are not produced on record before the Trial Court when the matter is pressed for ad-interim relief. When the issue is brought to the High Court in Appeal from Order, at this stage of ad-interim relief, fresh documents are produced and this Court is called upon to consider the same for grant of interim protection in an urgent and pressing manner, as if other litigants waiting patiently for their old matters to reach hearing, do not matter. This trend is increasing by the day.

22. The Division Bench of this Court has already directed action of demolition in the contempt proceedings, to which the Appellants were party. The Respondent – Corporation is obliged to follow the Orders of passed by the Division Bench of this Court and report compliance. The original Order dated 19.12.2019 passed in the writ petition directing action and second Order dated 19.09.2024 passed in contempt petition, both are neither shown to be set aside or varied or modified.

23. In these circumstances, there is no merit in the appeal and the same is dismissed. All pending interim applications are also dismissed.

24. Considering the conduct of the Appellants of filing proceeding at a belated stage and insisting on its consideration urgently, taking precious judicial time on the basis of documents which are prima facie found to be not supporting the Appellants, the Appellants are subjected to costs of Rs.50,000/- to be paid to Kirtikar Law Library, Appellate Side Bar Room No. 36, High Court, Mumbai, within a period of 2 weeks from today.

25. In the aforesaid circumstances and considering that the appeal is pressed on merits alongwith consideration of fresh documents, bar u/s. 104(2) of the Civil Procedure Code, 1908 will apply vis-a-vis all the material considered above.

26. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

27. At this stage a prayer is made for continuation of interim protection for a period of one week. Learned counsel for the Respondent – Corporation opposes the prayer. Considering the earlier Orders of the Division Bench of this Court as well as the facts and circumstances narrated above, the prayer for continuation of interim protection is rejected.

(M.M. SATHAYE, J.)