

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

**APPEAL FROM ORDER NO.553 OF 2024
WITH
INTERIM APPLICATION NO.10877 OF 2024
IN
APPEAL FROM ORDER NO.553 OF 2024**

Manoj Raghunath Patil ...Appellant

vs.

The Municipal Corporation
of Greater Mumbai ...Respondent

Mr. Samir Sarambalkar i/b Ms. Shilpa Sharma for the Appellant.

Ms. Seema Rawade for the Respondent-MCGM.

CORAM : SHYAM C. CHANDAK, J.

**RESERVED ON : 26th JULY, 2024.
PRONOUNCED ON : 21st AUGUST, 2024**

JUDGMENT :

Present Appeal impugns the Order dated 6th July 2024, whereby the Notice of Motion filed in Long Cause Suit No.5369 of 2024, has been rejected, by the learned Adhoc Judge, City Civil Court, Greater Mumbai.

2) Heard Mr.Sarambalkar, learned Advocate for the Appellant and Ms.Rawade, learned Advocate for the Respondent-Corporation. Perused the record.

3) Background facts leading to this Appeal are as under :-

3.1) As described in the plaint, the suit property is a room constructed of brick mortuary walls having cement concrete flooring admeasuring built-up area 81.10 sq. mtrs. having height of about 14 ft. situated at C.T.S No.354, Near Fish Market and Vetaleshwar Temple, Trombay Koliwada, Village Turbhe, Mumbai. Appellant has filed the said suit. The Respondent is the original defendant, which is a corporate body duly constituted under the provisions of Mumbai Municipal Corporation Act (*Hereinafter the parties are being referred to by their original status in the said suit i.e. Appellant as Plaintiff and respondent as defendant.*).

3.2) It was averred that the Plaintiff was in use, occupation and possession of the suit property since 1975 as tenants thereof, on a monthly rent of Rs.50/- payable to *Koli Panchayat Panch* of village Turbhe-Koliwada, Mumbai. On 26th

February, 1995 the Plaintiff approached to *Koli Panchayat Panch* and showed his interest to purchase the suit property. Thereafter, the Plaintiff purchased the suit property under a registered Sale Deed bearing No.5656 of 2016 dated 31st May, 2016. Pursuant thereto, the suit property was transferred in the name of the Plaintiff in the record of the defendant.

3.3) It was averred that, by an Application dated 7th April 2016, the Plaintiff requested the Assistant Commissioner, M/East Ward of the defendant, for permission to carry out tenantable repairs of the suit property. In turn, the defendant by its letter dated 28th February, 2017 intimated the Plaintiff that there is no necessity for obtaining permission for minor repairs. Later on, by letter dated 19th May 2017, the Plaintiff intimated the defendant that he is conducting the repair work of the suit property as per their guidelines.

3.4) It was averred that one Narayan Koli is residing in the locality where the suit property is situated. Since the date of purchase of the suit property by the Plaintiff, said Mr. Koli was obstructing the Plaintiff's peaceful ownership and possession over the suit property. Further, Mr. Koli started demanding

extortion money Rs.3,00,000/- from the Plaintiff and threatened to lodge false complaint against the Plaintiff. Therefore, on 12th January, 2017 the Plaintiff lodged a complaint with Trombay police against said Mr.Koli. In turn, on 13th January, 2017 Mr. Koli threatened the Plaintiff of filing a false complaint against him and his friends/associates. Therefore, on 13th January, 2017 itself the Plaintiff filed an intimation with Trombay Police Station that, there is possibility of filing false complaint by Mr.Koli. Thereafter, the Plaintiff was carrying out the repairs of the suit property. However, on 16th March, 2017 Mr.Koli obstructed the repair work of the Plaintiff. Therefore, the Plaintiff's wife filed a complaint against Mr.Koli with Trombay police station. That by letter dated 19th May, 2017 the Plaintiff intimated the defendant about the repairs work, which he had undertaken. Meanwhile, the Plaintiff filed a Civil Suit being S.C.Suit No.2242 of 2017 against Mr.Koli and his associates etc. seeking perpetual injunction against them.

3.5) However, the Plaintiff was served a notice dated 3rd June 2014, issued under Section 354A of the M.M.C. Act by the Defendant whereby the Plaintiff was directed to stop the erection

of the suit property and/or submit a permission approved by the competent authority in favour of the erection of the suit property within 24 hours from the receipt of the said notice. The Plaintiff replied the notice by his letter dated 5th June, 2024 enclosing relevant documentary evidence and explained that, the repair work which the Plaintiff has undertaken does not require any permission as contemplated in Section 342 read with Section 347 of the M.M.C. Act. However, the Designated Officer of M/East ward of the defendant passed an Order dated 27th June, 2024 holding that, the documents produced by the Plaintiff do not prove the authenticity of the noticed structure and therefore directed the Plaintiff to remove the suit structure within 7 days from the receipt of the said order. Therefore, the Plaintiff claimed that the said notice dated 3rd June, 2024 and the Order dated 27th June, 2024 issued by the defendant are illegal. Hence, the Plaintiff filed the said suit *i.e.*; L.C.No. 5369 of 2024 for the reliefs that the notice dated 3rd June, 2024 issued under Section 354A of the M.M.C. Act and the Order dated 27th June, 2024 passed by the Designated Officer, M/East ward in respect of the suit property be declared illegal and bad in law. Further, the

defendant be permanently restrained from demolishing the suit property in pursuance of the said notice dated 3rd June, 2024 and the Order dated 27th June, 2024. By the said Notice of Motion, the Plaintiff prayed for an interim injunction that, the defendant be restrained from demolishing the suit property in pursuance of the said notice dated 3rd June, 2024 and the order dated 27th June, 2024.

4) After considering the rival pleadings, documents and the submissions advanced by the learned Advocate for either side, the trial Court rejected the Notice of Motion. Hence, this Appeal.

5) Learned Advocate for Appellants submits that, the sketch, map, photos, Sale Deed, Index-II, tax receipt and other relevant documents clearly indicate that the suit property structure is admeasuring 81.10 sq. mtrs. and it has been in existence since long; that the Plaintiff was tenant in the suit property from 1975; since the suit property structure was old, it required repairs.; that the Plaintiff, therefore, sought permission dated 28th February, 2017 from the defendant to carry out tenantable repairs in respect of the suit property; that thereafter,

except doing minor repairs, the Plaintiff has not done any substantive reconstruction work in respect of the suit property; that however, the Plaintiff could not carry out the repairs due to illegal obstruction and interference by Mr.Koli; the Plaintiff, therefore, was constrained to file the said S.C.Suit No.2242 of 2017 against Mr.Koli.

5.1) Learned Advocate submits that, the impugned notice under Section 354A does not state and specify the mode, measurement and quantum of the illegal construction; that there was no foundation for issuance of said notice, hence, the notice is vague; that therefore, the impugned notice and subsequent Order dated 27th June 2024 passed in the proceedings are not sustainable in law and the same are liable to be quashed and set aside; that however, the documents of the Plaintiff were ignored and the photos produced by the defendant were given undue importance by the learned trial Court; that it ultimately resulted in the erroneous and illegal rejection of the notice of Motion.

6) Learned Advocate for the defendant-Corporation submits that, under the pretext of request for carrying out minor repairs, the Appellant has constructed a new structure on the

suit plot, however, he has not obtained prior permission for the same from the Defendant. The said construction is in contravention of Section 337/342 and 347 of the Act. The construction is made using R.C.C beams, columns and slab. All these facts are confirmed by the photos produced by the defendant which were not controverted. Therefore, the learned trial Court has rightly rejected the Notice of Motion.

7) It is case of the Plaintiff that the suit property structure was in existence since 1975. It was admeasuring total 81.10 sq. mtrs. having height of 14 ft. Initially, he was occupying the suit property as a tenant and later on, he became its owner by virtue of the aforesaid Sale Deed. To substantiate this claim, the Plaintiff has heavily relied on the said Sale Deed and the map issued by Maintenance Surveyor. The Sale Deed mentions that the Plaintiff purchased the suit property comprising of the land and structure on C.T.S. No.354 and it was admeasuring 81.10 sq. mtrs. The enclosed map also mentions that, there is a structure *i.e.*, on the Survey No.C-54 on the land bearing C.T.S. No.354 and said structure is in the name of the Plaintiff. However, the Sale Deed and the map do not specifically state that the suit

property structure was admeasuring 81.10 sq. mtrs. with height of 14 ft. and was spread over in the C.T.S.No.354 stated in the Sale Deed. In fact, both these documents are silent as to the exact size of the suit property structure. That apart, the old photos of the suit property room/structure relied by the Plaintiff indicate that it was having roof of tins. Therefore, it is difficult to accept the case of Plaintiff that since beginning the suit property structure was admeasuring 81.10 sq. mtrs. and having 14 ft. height as described in the plaint.

8) The second limb of submission of learned Advocate for the Plaintiff is that except carrying out minor repairs permitted by the defendant, the Plaintiff has not carried out any other kind of work, in particular a fresh or new construction work, in respect of the suit property. However, this claim is completely hollow. In this regard, it is material to note that in the impugned notice issued under Section 354A of M.M.C. Act, it has been categorically mentioned that the Plaintiff has undertaken a completely new construction, at the site of suit property. The said construction work or structure is shown as ongoing construction on the ground floor by using R.C.C. beams,

columns and slab. This fact was very well noted during the course of inspection of the suit property by the officers of the defendant. Moreover, the said fact is supported by the record produced in the Appeal as well as by the photographs enclosed with the inspection report submitted by the officer of the defendant before passing the order dated 27th June, 2024.

9) Undoubtedly, the inspection report produced before the trial Court was prepared by the concerned Public Servant during the course of discharging his official duty and in that process he took the relevant photos enclosed with the said report. Additionally, it is relevant to note that as stated in the assessment bill, the suit property structure was a *pucca* building, which is contrary to what is stated in the impugned notice and the impugned order.

10) In view thereof, there is no substance in the averments by the Plaintiff that the suit property structure was existing since 1975 and he has simply undertaken tenantable repairs in respect of the suit property. On the contrary, the Plaintiff has started a new construction in place of the existing

structure. As such, there is no *prima facie* case in favour of the Plaintiff.

11) Admittedly, *Koli Panchayat* was the erstwhile owner of the suit property. Meanwhile, Mr. Atmaram Laxman Patil, the then Secretary of the *Panchayat* and the Plaintiff, who was its treasurer then, addressed a letter dated 30th May, 2016 to the Sub-Registrar, East, R.C. Road, Chembur on behalf of *Koli Panchayat*. By the said letter the addressee was informed that, the premises (suit property) has been given to the Plaintiff and one Manohar M. Koli, and that Mr. Atmaram Patil has been authorised to give the Sale Deed. However, this letter does not state the details of the suit property. As mentioned in the decision of Collector of Stamps, *Kurla*, at page no.6 of the Sale Deed, the market value of the suit property was Rs.54,97,000/- at the time of the Sale Deed. However, it has been sold to the Plaintiff for a consideration of Rs.1,10,000/- only.

11.1) In the case of *City Montessori School vs. State of U.P.*¹, the Hon'ble Supreme Court observed that the rights of the State in the property/land can be transferred only by adopting a

1. 2024 SCC OnLine SC 1867.

fair and transparent process by which the State fetches the best possible price. This ruling reinforces the principles of equality and non-discrimination, ensuring State resources are allocated through clear and equitable processes.

11.2) As evident from the said letter dated 30th May 2016, *Koli Panchayat* is having a registration No. P.T.R. No. F.-11047, which indicates that said *Panchayat* is a public trust. Learned Advocate for the Plaintiff has fairly conceded this fact. Therefore, and considering the aforesaid reported decision, it was essential that the suit property was sold with an intention to fetch adequate market price. However, it was not.

12) From the aforesaid facts and circumstances, it can be safely presumed that taking the advantage of his position as a treasurer of the trust, the Plaintiff got the Sale Deed of the suit property executed in his favour for a meager amount, and then pushing that advantage further, he started the new construction on the site of the suit property. These circumstances fortify the conclusion above that the Plaintiff has no *prima facie* case to get the relief, as prayed for in the Notice of Motion.

13) Conspectus of the above discussion is that, the Appeal is devoid of merit and it is, therefore, liable to be dismissed.

13.1) The Appeal is dismissed, accordingly. Consequently, Interim Application No.10877 of 2024 does not survive and it stands disposed of.

[SHYAM C. CHANDAK, J.]