

(2004) 02 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 708 of 2004

Chandrakant Dharma Bhonu

APPELLANT

Vs

Pandurang Ramchandra Dandekar and Another

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227
Mumbai Municipal Corporation Act, 1888 — Section 351

Citation : AIR 2004 Bom 374 : (2004) 2 MhLj 782

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : M.D. Patil, M.M. Vashi, for the Appellant; M.V. Pandey and R.M. Pandey, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent, taken up for hearing and final disposal.

2. In this Petition under Article 227 an order passed by the City Civil Court on 19th September, 2003 rejecting a Chamber Summons filed by the Petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for being impleaded as a Defendant to the suit instituted by the First Respondent against the Second Respondent, has been challenged.

3. The Petitioner and the First Respondent are owners of adjoining structures situated at Goma Galli, Versova Village, Andheri (West), Mumbai 400 061. The structure belonging to the Petitioner consists of a ground floor built in brick masonry walls. According to the Petitioner, there was a parcel of open land between the structure of the First Respondent and that of the Petitioner. In the first week of November, 2001, it was alleged that the First Respondent started digging up the land underneath his structure, with the object of constructing a permanent structure in place of the existing structure which consisted of iron sheets. The Petitioner lodged a complaint on 6th November, 2001 by his

advocate's letter calling upon the Municipal Corporation to stop the unauthorized construction forthwith. Since the Municipal Corporation failed to pay heed, the Petitioner instituted a writ petition before this Court under Article 226 of Constitution (Writ Petition 2853 of 2001) praying for a writ of mandamus directing the Municipal Corporation to stop the unauthorized construction and to carry out a demolition of the work which had already been put up. The petition was initially heard on 21st November, 2001 when a direction was issued to the Municipal Corporation to take appropriate action in the matter either to stop, or as the case may be, demolish the construction work that was being carried out if it was found to be unauthorized. Thereafter on 11th December, 2001, the Municipal Corporation was directed to explain what steps had been taken in pursuance of the order passed by the Court on the previous occasion by deputing an officer to remain present in the Court. On 21st December, 2001, an affidavit was filed before the Court on behalf of the Municipal Corporation and an assurance was given to the Court that necessary action would be initiated against the construction which had been carried out by the First Respondent within a period of two weeks. The First Respondent on his part also instituted a petition before this Court under Article 226 of the Constitution (Writ Petition 367 of 2002).

4. Both the Petition that was instituted by the Petitioner (Writ Petition 2853 of 2001) and the Petition instituted by the First Respondent (Writ Petition 367 of 2002) were disposed of by orders dated 23rd April, 2002 of a Division Bench. In so far as the petition instituted by the Petitioner is concerned, the Division Bench noted that despite a stop work notice that was issued to the First Respondent, he had carried on his activity of making an unauthorized construction. The Municipal Corporation state that on 24th December, 2001, it had partially demolished the construction which had unauthorizedly been carried out by the First Respondent so as to render it unusable. This was in respect of the first floor. The Municipal Corporation stated that the ground floor had not been demolished since the existing ground floor premises of the First Respondent had been damaged due to a collapse of an adjoining roof on 13th June, 2001. The Division Bench disposed of the Petition filed by the Petitioner recording that action had been taken by the Municipal Corporation in respect of the unauthorized construction raised by the First Respondent.

5. In so far as the Petition filed by the First Respondent was concerned, the Division Bench noted that while the material on record indicated that the house had collapsed due to the falling of a roof slab of the adjoining house, the First Respondent had reconstructed his house to comprise of a ground and first floor without the permission of the Municipal Corporation. The First Respondent was permitted by the Division Bench to make an application for regularization of the house which had been constructed to the Executive Engineer, Building Proposals of the Municipal Corporation. The Municipal Corporation was directed to process and consider the application for regularisation and to maintain the status quo in the meantime.

6. After this Court disposed of the Petitions on 23rd April, 2002, the Petitioner submitted a representation to the Municipal Corporation recording that whereas the original structure in the occupation of the First Respondent admeasured approximately 270 sq. ft., the First Respondent had unauthorizedly constructed a ground floor which now admeasured about 660 sq.ft. Besides this, it was alleged that the First Respondent had unauthorizedly constructed a first floor Which had never been in existence originally. The application for regularisation submitted by the First Respondent was considered by the Municipal Corporation and by a communication dated 23rd May, 2002, the Executive Engineer, Building Proposals declined to accede to the prayer for regularisation on several grounds.

7. The Petitioner once again moved this Court in a petition under Article 226 of the Constitution (Writ Petition 1644 of 2002) making a grievance of the fact that no action was being taken by the Municipal Corporation to demolish the unauthorized structure. During the pendency of the Petition, the Municipal Corporation served a notice u/s 351 of the Mumbai Municipal Corporation Act, 1888 upon the First Respondent calling upon him to show cause as to why the structure constructed by him consisting of a ground floor and first floor should nor be removed. On 18th October, 2002, the writ petition filed by the Petitioner was disposed of by me Division Bench in view of the fact that, in the meantime, a notice u/s 351 had been issued to the First Respondent. The Division Bench, however, observed that the Municipal Corporation shall conclude the proceedings u/s 351 expeditiously and in no case later than two months from the receipt of the reply by the First Respondent.

8. The First Respondent filed his reply on 18th October, 2002 after which an order was passed on 29th January 2003 by the Assistant Commissioner, K-West Ward, rejecting the representation and maintaining that the structure was entirely unauthorized.

9. Even after the Division Bench passed its order dated 18th October, 2002 directing me Municipal Corporation to take action expeditiously within a period of two months, the grievance of the Petitioner was that no action was in fact taken by the Municipal Corporation. Hence, the Petitioner filed another petition before this Court under Article 226 of the Constitution, being Writ Petition 411 or 2003. A specific grievance was made in that pennon that the Municipal Corporation was favouring the First Respondent because of the political clout wielded by the First Respondent as a result of which, despite successive orders passed by the Court the unauthorized construction had still been maintained. In that writ petition an order was passed by the Division Bench on 29th April, 2003. By then, me Municipal Corporation had rejected the representation filed by the First Respondent to the notice u/s 351 upon which the First Respondent had instituted a suit before the City Civil Court. Hence, the Division Bench disposed of the writ petition observing that it would be appropriate if the Petitioner herein was to apply and intervene in the suit which was pending before the City Civil Court. Thereupon, the Petitioner instituted a Chamber Summons before me City Civil

Court for impleadment. That Chamber Summons has been dismissed by the impugned order passed by me Trial Judge on 19th September, 2003.

10. The narration of facts in the earlier part of this judgment would reveal that the litigation in the present case has a chequered history. The Petitioner and the First Respondent are adjoining land owners. The process of initiating action against the First Respondent was initiated on a complaint by the Petitioner drawing the attention of the Municipal Corporation that the First Respondent was in the process of carrying out an unauthorized construction. The grievance of the Petitioner is that the area of the ground floor has been extended far beyond its original dimensions and that a first floor was constructed which was never in existence at any point in the past. In the petition, that was instituted before this Court, successive orders were passed by the Court on 21st November, 2001, 11th December, 2001 and 21st December, 2001 requiring me Municipal Corporation to take steps in accordance with law. The Court was assured that action would be taken against the construction which was unauthorizedly carried out by the First Respondent. Eventually, on 23rd April, 2002 the Division Bench was informed by the Municipal Corporation that the work which had been unauthorizedly carried out in respect of the first floor had been partly demolished so as to render the first floor unusable. In the writ petition which was filed by the First Respondent, the Division Bench permitted the First Respondent to apply for regularisation. The plea for regularisation was rejected by die Municipal Corporation. Even thereafter, as the facts would show, the grievance of the Petitioner was that the Municipal Corporation was not taking adequate and expeditious steps for the removal of the remaining part of me unauthorized work which remained. After the Petitioner instituted another writ petition, Writ Petition 1644 of 2002 the Municipal Corporation issued a notice u/s 351 of the Act requiring the First Respondent to show cause as to why the unauthorized work should not be demolished. Despite an order of this Court requiring the Municipal Corporation, to conclude the proceedings within two months, the grievance of the Petitioner was that no action was being taken by the Municipal Corporation. Thereupon a further writ petition was filed by the petitioner being Writ Petition 411 of 2003. By the time, that the Petition came up, the representation filed by the First Respondent was rejected and an order of demolition had been passed. In the meantime, the First Respondent had moved the City Civil Court in a suit. The Division Bench disposed of the Petition observing that the Petitioner would be at liberty to apply for intervention in the suit which was pending before the City Civil Court.

11. The conspectus of facts clearly shows that the Petitioner is directly and substantially affected by the unauthorized construction which is alleged to have been carried out by the First Respondent. Indeed, the process of enforcing the statutory powers and duties of the Municipal Corporation has been initiated on complaints filed by the Petitioner and pursuant to successive petitions filed before this Court under Article 226 of the Constitution. In the Chamber Summons which was filed before the City Civil Court, the Petitioner has

specifically made a grievance of the fact that between me structure of the Petitioner and the First Respondent there was a vacant land in the past which had been used by the Petitioner and by his forefathers. The Petitioner was, in the circumstances, directly aggrieved by the conduct of the First Respondent in having allegedly increased the area of the ground floor and by constructing an unauthorized first floor thereon. The grievance of the Petitioner was that the inaction of the Corporation was due to the clout wielded by the First Respondent. The Corporation was constrained to act only upon successive petitions instituted by the Petitioner in this Court. Having regard to these facts and circumstances, I am of the view that the learned Trial Judge was dearly not justified in rejecting the Chamber Summons and in coming to me conclusion that the Petitioner was neither a necessary nor proper parry. Undoubtedly, the Plaintiff is dominus litis and mar is a principle which has been laid down by Vimadaial, J. in Jivanlal Damodardas Wani Vs. Narayan Ukha Sali, . However, having regard to the provisions of Order 1 Rule 10 of the CPC 1908 it cannot be said that the application for impleadment that was moved on behalf of the Petitioner was misconceived. The Petitioner is directly and substantially concerned with and affected by the proceedings before the City Civil Court for more than one reason. The action of carrying out an allegedly unauthorized construction and the alleged encroachment by the First Respondent directly affects me rights of the Petitioner. Secondly, it is at the behest of the Petitioner and, in view of the proceedings which were instituted, before this Court, that the Municipal Corporation has almost grudgingly resorted to its statutory powers under the Mumbai Municipal Corporation Act 1888. In the circumstances, the order passed by the learned Trial Judge is unsustainable and is accordingly quashed and set aside. The Chamber Summons instituted by the Petitioner (Chamber Summons 714 of 2003) shall stand allowed. Rule is made accordingly absolute in terms of prayer Clauses (a) and (b). Amendment to be carried out within a period of one week from today.

Parties be given a copy of this order duly authenticated by the Sheristedar/ Personal Assistant.