

(1975) 02 BOM CK 0020

In the Bombay High Court

Case No : Appeal from Order No. 524 of 1974 and Civil Application No. 3719 of 1974

Jagdishprasad R. Agarwal

APPELLANT

Vs

Municipal Corporation of Gr. Bom.

RESPONDENT

Date of Decision : 10-02-1975

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 351

Citation : (1975) 02 BOM CK 0020

Hon'ble Judges : B. Lentin, J

Bench : Single Bench

Advocate : S.P. Kanuga and S.H. Gurshani, for the Appellant; V.T. Walawalkar and S.K. Kadam, for the Respondent

Judgement

B. Lentin, J.—This appeal arises from the judgement and order passed by the learned Judge of the City Civil Court, dismissing the Motion taken out by the appellant to restrain the respondents, namely the Municipal Corporation of Greater Bombay, from enforcing the impugned notice dated 2nd August, 1972 and from demolishing the first floor of the appellant plaintiff's property situate at Agarwal Nagar, Jogeshwari (East), Bombay.

2. This appeal can be disposed of on a narrow point. On 2nd August, 1972, the respondent issued a notice u/s 351 of the Bombay Municipal Corporation Act, calling upon the appellant to show cause why the appellant's construction should not be pulled down on the ground that it was unauthorised. By the notice, it was further stated that if the appellant was in possession of proof that the structure is not unauthorised, the appellant should produce all documentary evidence along with his statement on or before 16th August, 1972. In reply, by his letter dated 4th August, 1972 addressed to the Deputy Municipal Commissioner, the petitioner stated that the show cause notice was vague on the ground that the petitioner is the owner of several properties at Agarwal Nagar, Gufa Tekri, and on that ground challenged the validity of show cause notice.

3. Here it may be stated that the version of the appellant that the show cause notice is vague, appears to be thoroughly unjustified, presumably in an attempt to while away time. Significantly enough, in the plaint the appellant plaintiff has been able to pin-point the property sought to be demolished by the respondents. It is, therefore, curious that he should have been unable to do so in his reply dated 4th August, 1972. Thus the appellant even failed to produce documentary evidence, despite the opportunity given to him.

4. Mr. Kanuga, the learned Advocate appearing for the appellant, contended that the show cause notice was issued mala fide, in as much as the appellant had made some complaints against some officers of the Corporation, with the result that the show cause notice had been issued out of spite by those officers. There is nothing to suggest that the appellant had made any complaints about the signatory of the show cause notice dated 2nd August, 1972, namely the Deputy Municipal Commissioner. Nor was any such suggestions made by Mr. Kanuga. However, it appears that in the trial Court, it was contended on behalf of the petitioner that some complaints were made some time in 1964. The learned Judge has thereupon correctly come to the conclusion that the show cause notice having been issued 8 years thereafter, is not a circumstances proximate to the complaints allegedly filed by the appellant against some employees of the Corporation.

5. Mr. Kanuga, states that despite the fact that an opportunity had been given to the appellant by the show cause notice dated 2nd August, 1972, to produce documentary evidence, no documentary evidence had been produced by the appellant before the respondent to establish that the structure was not unauthorised. Mr. Kanuga suggests that if the respondent give time to the appellant, the appellant will produce the necessary documentary evidence along with a written statement and satisfy the respondents that the appellant's structure in suit is not unauthorised.

6. Mr. Walawalkar, the learned Counsel appearing on behalf of the respondents, states that the appellant is at liberty to make his application with such documentary evidence in his possession and that the respondents will not enforce the impugned notice for a period of 10 days after the result of the appellant's application is communicated by the respondents to the appellant plaintiff at his address mentioned in the plaint, provided, however, the appellant makes his application and applies for an interview with the concerned officer within a period of 10 days from today.

7. That is entirely a matter between the parties. As far as I am concerned, there is no merit in the appeal which I dismiss with costs. Rule in the Civil Application 3719 to 1974 discharged. Interim injunction to stand vacated.