

(2016) 10 BOM CK 0159

In the Bombay High Court

Case No : Appeal From Order (Stamp) No. 27460 of 2016 With Civil Application (Stamp) No. 27463 of 2016

Mr. Mohd. Zuber Mohd. Yusuf Memon

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 15-10-2016

Acts Referred:

Mumbai Municipal Corporation Act, 1888 — Section 354-A

Citation : (2017) 3 ALLMR 21 : (2017) 2 MhLJ 289

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi, J.

Bench : Single Bench

Advocate : Mr. Virendra T. Dubey, Advocate, for the Appellant; Mrs. M. R. Bhoir, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar-Joshi, J. (Oral) - Admit.

2. With the consent of the learned counsel for the parties heard finally at the stage of admission itself.

3. This appeal is preferred against the order dated 31.08.2016 passed by the City Civil Court, Mumbai in Draft Notice of Motion in L.C. Suit No. 2058 of 2016 thereby refusing the ad interim relief as sought by (903) AOST 27460-16 the appellant for restraining the respondent-Municipal Corporation from taking any action in pursuance of the notice issued under Section 354-A of the MMC Act on 23.05.2016 and in pursuance thereof, the order passed by the Assistant Municipal Commissioner on 19.08.2016.

4. The case of the appellant is that, he is in possession of the suit premises consisting of Ground + two floors area admeasuring about 1800 sq. ft. bearing CTS Nos.925 and 937, Rambachan Singh Compound, Vinoba Bhave Nagar at Kurla (W), Mumbai-400 070. It is further his case that the said construction consists of B.M. wall with A.C. sheet roof. According to him, he has acquired said

premises pursuant to the consent terms dated 11.02.2016, filed in Suit No. 1359 of 2012. It is his case that the said premises is in very same condition since inception and in existence since prior to 1976. The area, in which the premises are situated, is also declared as slum area vide Government Notification dated 12.02.1976. The structure is also assessed to the Municipal Taxes. He has simply replaced the A.C. sheet roof in place of old one as the old one was badly damaged. However, as his relations with the neighbours are not cordial, they made false complaints to the Municipal Corporation and the respondent-Municipal Corporation, acting on their complaints, issued the impugned notice dated 23.05.2016 under Section 354-A of the MMC Act calling upon him to stop immediately the erection of the unauthorized construction of the second floor. He has replied the said notice with the (903) AOST 27460-16 explanation that he is not carrying out any new construction but was just replacing the A.C. sheet roof. He has also produced on record the documents, like, the assessment bill of the year 1980. However, without considering his contention, the final order came to be passed by the Assistant Municipal Commissioner on 19.08.2016, thereby calling upon him to remove the said construction on the ground that it is illegal and unauthorized.

5. The appellant was, therefore, constrained to approach Trial Court and by the draft Notice of Motion filed along with Suit, he sought the relief of interim injunction restraining the respondent-Municipal Corporation from taking any action in pursuance of the said notice and the final order.

6. The respondent-Municipal Corporation, however, resisted the said Notice of Motion and after hearing the learned counsel for both the parties, the Trial Court was pleased to reject the ad-interim relief.

7. The submission of the learned counsel for the appellant is that, neither the respondent-Municipal Corporation nor the Trial Court has properly considered his case. It is submitted that since beginning the suit structure consists of Ground + two floors and he is not carrying out any new construction but only changing the A.C. sheet roof. Secondly, it is urged that the Trial Court has not considered the fact that, as the suit structure is falling under the slum area, notified by the Competent (903) AOST 27460-16 Authority, the Municipal Corporation cannot take any action. The reliance is also placed on the unreported Judgment of this Court in the case of Govardhan Ramnaresh Singh v. The Municipal Corporation of Gr. Mumbai in Appeal from Order No. 257 of 1999 dated 15.04.1999 to submit that once the construction is complete, the Municipal Corporation cannot take any action under Section 354-A of the MMC Act and the remedy lies somewhere in any other provision.

8. The reliance is also placed on the Judgment of this Court in the case Shri Ramawatar Babulal Jajodia v. Municipal Corporation of Gr. Mumbai, 2014 (2) ALL MR 303 to urge that the Municipal Corporation has no jurisdiction to decide the complicated issues specifically if they pertain to the slum area governed by the Slum Act. According to the learned counsel for the appellant, therefore the

impugned order passed by the Trial Court rejecting the ad interim relief needs to be quashed and set aside, especially, having regard to the notification issued long back declaring the said survey number in which the suit premises fall, namely, Survey No.257 as slum area.

9. Per contra, learned counsel for the respondent-Municipal Corporation has strongly resisted these contentions by submitting when the subject notice was issued, the construction was already in progress. The appellant has not produced any document to show that the said construction was carried out with due permission and getting the plans (903) AOST 27460-16 sanctioned from the Municipal Corporation. The suit premises are not assessed to census so as to attract the bar under the provisions of the Maharashtra Slum Area Act and hence according to learned counsel for the respondent-Municipal Corporation, the impugned order passed by the Trial Court does not call for any interference.

10. In my considered opinion, the impugned notice issued to the appellant on 23.05.2016 under Section 354-A of the MMC clearly goes to show that, at the relevant time the unauthorized construction of second floor was in progress and hence, the appellant was called upon to stop the said construction or to produce the permission, if any, obtained from the Competent Authority for carrying out such construction. The description of the unauthorized construction, given in the impugned notice, is relevant and it reads as follows:

"Unauthorized construction of second floor (Total 9 rooms) admeasuring 28 mtr x 7 mtr x 1.3 mtr ht. approx. on existing G+1 structure by using brick masonry wall at Ram Cacchan Tabela, C- Block, Opp. Siddiquiya Masjid, V. B. Nagar, Kurla (W), Mumbai - 70."

11. Now the description of the suit premises, which the appellant claims to have been purchased from its earlier owner, by virtue of the Consent Terms filed in the suit bearing No.3437 of 2012, as given in para 1 of the said Consent Terms is, as follows:

"It is agreed, declared and confirmed that the Defendants are liable to pay to the Plaintiffs the sum of Rs.28,00,000/- (Rupees Twenty eight lakhs only) being balance consideration in view of by virtue of and under Memorandum of Understanding dated 3rd day of August, 2011 for assignment of right and interest in respect of (903) AOST 27460-16 land admeasuring 1250 Sq. Ft. out of land admeasuring 5,000 Sq. Ft. bearing Plot No. 257, CTS No. 937 and 925 of Village Kurla, Block, Ram Bachan Singh Compound, Saree Dying and Printing Karkhana, Gala No.2 Front, V. B. Nagar, Kurla (West), Mumbai - 400 070."

12. Thus, it is apparent that the premises which the appellant has purchased by virtue of this Consent Terms is an open plot of land with one Gala standing thereon. This description does not state that the construction standing on the said land was of Ground + 2 upper floors. If, it was so, there was no any reason for not to mention or give such description. Though in the plaint, the appellant has given the description of the premises as Ground + 2 upper floors but there is

not a single document, as observed by the Assistant Municipal Commissioner in his final order, showing that the earlier structure which was in existence and in respect of which the assessment was made for municipal taxes, was consisting of Ground + 2 upper floors. The photographs, which were produced on record by the Municipal Corporation and which the Trial Court has considered while passing the impugned order, clearly reveal that when the notice was issued to the appellant, the construction of second floor was in progress. Even the photographs, which the appellant has produced along with copy of the Judgment, on which he is relying on in the Appeal from Order No. 257 of 1999, reveal that the construction of Ground + upper two floor was in progress.

13. Apparently, the burden was on the appellant to show that this construction, which he has undertaken, was with proper permissions and (903) AOST 27460-16 authority from the Municipal Corporation. Though the opportunity was given to the appellant to prove the legality of the said construction, he has failed to prove the same, either before the Assistant Municipal Commissioner or even before the Trial Court or this Court. Merely saying that he has not carried out the construction and he has only changed the A.C. sheet roof is not sufficient. Hence, in the absence of any evidence proving the permission or the plan sanctioned for such construction, the Trial Court has rightly held that the said construction is illegal and unauthorized and the Municipal Corporation was perfectly justified in taking action against the said construction. Therefore, no interference is warranted in the final order passed by the Assistant Commissioner and by the Trial Court.

14. As regards the contention raised by the appellant is that, once the suit construction is completed, then the remedy for Municipal Corporation lies in some other provision and not in the provision like the notice issued under Section 354-A of the MMC Act. However, in the instant case, the photographs produced on record and the observations made by the Trial Court, especially, recitals in the notice under Section 354-A reveal that when the notice was issued, the construction was in progress. Moreover, there is no completion certificate or occupation certificate to show that the construction is already completed. In view thereof, the notice issued under Section 354-A of the MMC Act and the (903) AOST 27460-16 action taken in pursuance thereof cannot be called illegal.

15. Even in respect of the Judgment relied upon by the learned counsel for the appellant, that of Shri Ramawatar Babulal Jajodia (*supra*), the same cannot be made applicable to the facts of the instant case. As rightly submitted by the learned counsel for the respondent, unless the suit structure is censused by the competent authority, mere declaration of the said area as slum area is not sufficient to hold that the Municipal Corporation has no authority to take any action against the unauthorized constructions falling in the slum area. The Municipal Corporation, being the Town Planning Authority, is having every power and authority to take such action, therefore, this contention also fails.

16. The net result is that, as the Trial Court has, after considering all the aspects,

rightly rejected the ad interim relief of injunction claimed by the appellant, no case is made out to interfere in the impugned order of the Trial Court. The appeal holds no merits and hence stands dismissed.

17. In view of the disposal of the appeal, the civil application does not survive and hence stands disposed of.