

(2006) 11 BOM CK 0080
In the Bombay High Court
Case No : Appeal From Order No. 688 of 2006

Prakash Harishchandra Muranjan

APPELLANT

Vs

Mumbai Metropolitan Region Development Authority and Shri
S.V. Pagnis, Executive Engineer, Mumbai Metropolitan Region
Development Authority

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Mumbai Metropolitan Regional Development Authority Act, 1974 — Section 12, 13, 14,
15, 16
Mumbai Municipal Corporation Act, 1888 — Section 299, 351, 61, 63

Citation : (2007) 1 ALLMR 639 : (2007) 3 BomCR 192

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : G.S. Godbole, instructed by, Swati Paradkar, for the Appellant; Kiran Bhagalia, for the Respondent

Judgement

D.B. Bhosale, J.—This Appeal from order under Order 43 Rule 1 (r) of the Code of Civil Procedure, challenges the order dated 23.8.2006, rendered by the City Civil and Sessions Court, Greater Mumbai, in Notice of Motion No. 1990 of 2006 in L.C.Suit No. 2238 of 2006, by which the notice of motion has been rejected.

2. In the notice of motion, the appellant had made the following prayers:

(a) That this Hon?ble Court be pleased to grant order and temporary injunctions restraining the defendants and their agents and servants or any other persons claiming by under or through them from executing the orders communicated by Exhibit "J1 to J27" and demolish the structures mention therein in Execution of the said orders being Exhibit.

(b) This Hon?ble Court be pleased by granting order and temporary injunctions restraining the defendants and their agents and servants or any other persons for entering into the property bearing Survey No. 35, Hissa No. 1 (Part), C.T.S.

No. 688 situate at Marol Sakhi Vihar Road, Opposite Killick Nikson Marol Andheri (E), Mumbai-72, without acquiring the same under the land Acquisition Act and/or any other relevant Act, paying compensation and to demolish chawl, standing thereon without providing alternate accommodation to tenants/occupants by preparing scheme u/s 12(K) of MMRDA Act.

3. In the suit instituted by the appellant, he has basically challenged the twenty-seven orders/letters, all dated 13.5.2006, declaring that the suit structures admeasuring 485 sq.yards bearing Survey No. 35,Hissa No. 1(Part), CTS No. 688, situate at Saki Vihar Road, Opposite Killick Nikson, Marol, Andheri (East), Mumbai-400 072 and chawl standing thereon (for short, "the suit structures") are unauthorised and cannot be tolerated as per the policy.

4. Respondent No. 1-Mumbai Metropolitan Region Development Authority (for short, "the Authority") is established under the Mumbai Metropolitan Region Development Authority Act, 1974 (for short, "the Act of 1974"). Respondent No. 2, the Executive Engineer of the Authority, had issued notices dated 13.4.2006 u/s 351 of the Mumbai Municipal Corporation Act, 1888 (for short, "the Act of 1888"). The appellant did not submit any reply or produce documents to prove that the suit structures exist since prior to datum line. The Authority, therefore, passed the orders dated 13.05.2006 directing the appellant to remove from the suit site or else the suit structures would be demolished. All these orders are the subject matters of the suit.

5. Submission of Mr Godbole, learned Counsel for the appellant, was three-fold. Firstly, respondent No. 2, Executive Engineer of the authority, had no power to issue the notice dated 13.4.2006 u/s 351 of the Act of 1888 and since the notice itself was illegal, the order dated 13.5.2006 passed thereon is without jurisdiction and deserves to be quashed and set aside. Secondly, he submitted that the suit structures have been in existence since prior to 1.4.1962, the datum line, and hence are tolerated. Lastly, he submitted that the second part of the prayer Clause (b) in the notice of motion seeking injunction restraining the authority from entering into the suit property/structures for the purposes of construction/widening of the road without acquiring the same under the Land Acquisition Act and/or providing the alternative accommodation to the tenants/occupants by preparing scheme u/s 12(K) of the Act of 1974 has not been considered at all by the trial court.

6. At the outset, I would like to deal with the first contention urged on behalf of the appellant. The Authority was established under the Act of 1974, for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development of the areas in Brihan Mumbai and certain areas around about into a Mumbai Metropolitan Region and for executing plans, projects and schemes for such development, and to provide for matters connected therewith. Section 4 of the Act of 1974 provides the composition of the Metropolitan Authority. Under Sub-section (2) thereof the Minister for Urban Development is the Chairman, and the Metropolitan Commissioner is the Member-secretary, of the Authority. Sub-

section (1) of Section 4A provides for powers and duties of Chairman, Metropolitan Commissioner etc. The Chairman of the Authority thereunder is empowered to supervise and control all the activities on behalf of the Authority and can exercise such powers and perform such duties as are conferred on him by the Act of 1974 and exercise such other powers and perform such other duties as the Authority may, from time to time, by regulations determine.

7. Sub-section (2)(a) of Section 4A of the Act of 1974 deals with the powers of the Metropolitan Commissioner. It provides that subject to the provisions of Sub-section (1), the Metropolitan Commissioner shall be the Chief Executive Officer of the Authority and shall exercise such powers and perform such functions or duties as the Authority may, by a resolution passed in this behalf, direct. It further provides that the Metropolitan Commissioner may, by general or special order, direct that such of the powers or functions or duties delegated to him as aforesaid or under Sub-section (5) of Section 7 shall be exercised or performed by such of the officers of the Authority, as may be specified in such order. Section 7 provides for constitution and powers of Executive Committee. Under Sub-section (5) thereof, the Executive Committee may from time to time, by a resolution passed in this behalf, direct that any power and any function or duty which is conferred on it, by or under the provisions of this Act, shall be exercised or performed by the Metropolitan Commissioner.

8. Section 12 in Chapter IV of the Act of 1974 deals with the functions of the Metropolitan Authority, while Section 13 provides that no other authority or person to undertake certain development without permission of the authority. Sections 14,15,16 and 16A deal with the powers of the Authority to give directions, to require local authority to assume responsibilities in certain cases, to executive any plan and to subscribe to the share capital of certain companies or co-operative societies or to contribute to the corpus of certain trusts or societies. Section 17 confers power on the Authority to provide amenity within Brihan Mumbai. In the instant appeal, we are concerned with Sub-section (1) and (2) of Section 17 and it would be advantageous to reproduce them to appreciate the submissions of the learned Counsel for the parties on the question raised in this appeal.

17.(1) Notwithstanding anything contained in this Act or the Mumbai Municipal Corporation Act or any other law for the time being in force, the Authority may, in consultations with the Municipal Commissioner of the Brihan Mumbai Municipal Corporation, prepare any project or scheme with a view to provide an infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same.

Explanation.-For the purposes of this section, the term "infrastructure" shall also mean and include streets, roads, bridges and any other means of transport and communication, and activities related or incidental for the execution of such infrastructure project or scheme and shall not include other items specified in Section 61 and 63 of the Mumbai Municipal Corporation Act.

(2) For the purposes of preparation and execution of a project or scheme under Sub-section (1), the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act and the Maharashtra Regional and Town Planning Act, 1966, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts.

9. Before I proceed further, it needs to be noted that the learned Counsel for the appellant before the court below and, initially, before me raised the aforesaid question overlooking the amendment of 1989 by which Sub-section 2(a) of Section 4A of the Act of 1974 was amended. By the said amendment, Sub-section (2)(a) was further expanded, conferring the power of delegation on the Metropolitan Commissioner.

Sub-section (2)(a) of Section 4A of the Act of 1974, as it stood prior to the amendment of 1989, reads thus:

(2)(a) Subject to the provisions of Sub-section (1), the Metropolitan Commissioner shall be the Chief Executive Officer of the Authority.

After Amendment of 1989, it reads thus:

(2)(a) Subject to the provisions of Sub-section (1), the Metropolitan Commissioner shall be the Chief Executive Officer of the [Authority and shall exercise such powers and perform such functions or duties as the Authority may, by a resolution passed in this behalf, direct. The Metropolitan Commissioner may, by general or special order, further direct that such of the powers or functions or duties delegated to him as aforesaid or under Sub-section (5) of Section 7 shall be exercised or performed by such of the officers of the Authority, as may be specified in such order].

The aforesaid bracketed words substituted for the word "Authority" were completely overlooked by the advocate as well as the court below when the matter was being argued. Even before me, Mr Godbole, learned Counsel for the appellant, initially made his submissions on the basis of a zerox copy of the Act produced for my perusal without the amendment of 1989. When the amendment of 1989 was brought to his notice by the learned Counsel for the respondent, Ms Bhagalia, still submitted that even Sub-section (2)(a) of Section 4A, as it stands, also does not confer power on the Metropolitan Commissioner to delegate his powers to respondent No. 2, the Executive Engineer, which the Metropolitan Commissioner gets u/s 17 of the Act of 1974. In short, he submitted that on plain reading of Section 4A (2) (a) with Section 17, it is clear that it does not empower the Metropolitan Magistrate to delegate his powers to any other officer of the Authority.

10. A careful reading of the provisions of Section 17(1) of the Act of 1974 clearly demonstrate that the Metropolitan Commissioner virtually replaces the Municipal Commissioner for the proposes of providing amenity within Brihan Mumbai and/

or for preparing any project or scheme with a view to provide infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same. Sub-section (2) thereof provides that the Metropolitan Commissioner and the authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, for the purpose of preparing and execution of the project or scheme under Sub-section (1) of Section 17. Under Sub-section (2)(a) of Section 4A of the Act of 1974 the Metropolitan Commissioner is empowered to exercise all such powers and perform such functions or duties as the Authority may, by a resolution passed in that behalf, direct. In turn, the Metropolitan Commissioner, by general or special order, is further empowered to direct that such of the powers and functions or duties delegated to him, as aforesaid or under Sub-section (5) or Section 7 shall be exercised or performed by such of the officers of the Authority as may be specified in such order. It is thus clear that this provision clearly empowers the Authority to delegate its powers to the Metropolitan Commissioner and the Metropolitan Commissioner, in turn, can sub-delegate those powers or functions to the officers of the Authority, subordinate to him, as may be specified in such order. There is absolutely nothing in Section 17 which curtails the power/right of the Metropolitan Commissioner from delegating his powers or functions or duties to his subordinate officers of the Authority. The Metropolitan Commissioner and the Authority, as a matter of fact, step into the shoes of the Municipal Commissioner and the Corporation, respectively, under the Act of 1888 as also the Maharashtra Regional and Town Planning Act, 1966, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts. The submission of Mr Godbole, learned counsel for the appellant that Section 4A does not empower the Metropolitan Commissioner to delegate powers of the Municipal Commissioner including the power u/s 351 of the Act of 1888 which he gets u/s 17 of the Act of 1974, in my opinion, deserves to be rejected.

11. There was no dispute about the powers of the Metropolitan Commissioner. In fact Mr. Godbole submitted that it is only the Metropolitan Commissioner has a power to issue notice u/s 351 of the Act of 1888 and that the Executive Engineer has no power to issue such notice. However, for the reasons recorded in the foregoing paragraphs the Metropolitan Commissioner, in my opinion, has ample powers to delegate all such of the powers or functions or duties exercised by him to such of the officers of the Authority, as may be specialised in special or general order. The Metropolitan Commissioner, in fact, vide office order dated 10.1.2005, has delegated the powers under the Act of 1888, MRTPA Act, 1966 and the Maharashtra Slum Areas Act, 1971, as contemplated by Sub-section (2) of Section 17 read with Section 4A of the Act of 1974 for speedy implementation of Mumbai Urban Transport Project and Mumbai Urban Infrastructure projects. The said office order has been referred to by the learned Judge in paragraph 7 of the impugned order. From bare perusal of the said order, it is clear that the Executive Engineer can exercise or perform such of the powers, functions, and duties

delegated by the Metropolitan Commissioner. In view thereof, the notice issued u/s 351 by respondent No. 2, Executive Engineer cannot be faulted. The next submission of Mr Godbole was that the suit structures have been in existence since prior datum line and hence cannot be treated as unauthorised and are tolerated. In support of this submission, my attention was drawn to the set of two documents, viz. the ten property register cards with 7/12 extracts and the assessment bills to contend that the disputed structures were assessed since prior to datum line starting from 1955 and, therefore, are tolerated structures. I perused the notice u/s 351 dated 13.4.2006 and the orders passed thereon dated 13.5.2006. I also perused the assessment bills and other material placed on record. From perusal of paragraphs 8 and 9 of the impugned order, I am satisfied that the court below has considered the said material in proper perspective to hold that the assessment bills produced on record do not establish that they pertain to the suit structures, and insofar as ten property register cards are concerned, they would not help the appellant to establish that the disputed structures were constructed prior to 1.4.1962. Mr Godbole could not take the case any further so as to disturb the findings recorded in that behalf in paragraph 9 of the impugned order. Paragraph 9 of the impugned order reads thus:

9. In this regard, Advocate Paradkar draws Court's attention to the Copy of 7/12 Extract of Survey No. 35, Hissa NO.1, which stands in the name of Harishchandra Pandurang Muranjan. The plaintiff has submitted 10 Property Register Cards. The Extract of 7/12 as well as Property Register Cards do not disclose the existence of the structures. At the most the Court may draw inference from these documents that the plaintiff's father is shown as owner of the land below the structure. The plaintiff has to show the structure has been constructed prior to 01/04/1962, therefore, it is tolerable. The Extract of 7/12 as well as Property Register Cards are not competent documents to consider the suit structure is constructed prior to 1962. So, the documents are not considerable. Besides this, Advocate Paradkar draws Court's attention to the Assessment Bills. The Assessment Bill at Page No. 96 of the Plaint for the period of 01/04/1955 to 30/09/1955 stands in the name of H.P.Muranjan. This assessment bill pertains to structure of C.I.Shed situated at Tunga Village. The Assessment Bill for the period 1/10/1955 to 31/03/1956 is of the same description. The Assessment bill for the period of 01/04/1956 to 30/09/1956 is of the same description. The Assessment Bill for the period 1/10/1962 to 31/03/1963 stands in the name of H.P.Muranjan pertaining to C.I.Shed.

The address is shown as Saki Vihar Road. Advocate Paradkar heavily relied upon these Assessment Bills and submitted the suit structure is assessed prior to 1962, therefore, certainly liable to be protected. This statement is opposed by Advocate Murudkar for the reasons, addresses shown on the Assessment Bills are varied. The Assessment Bill for the period 1/10/1955 to 31/3/1956 is having Assessment No. L-4564(5) at the address of Tunga Village and the Assessment Bill for the period 1/10/1962 to 31/03/1963 having C.I.Shed situated at Saki Vihar Road bearing Assessment No. L-4604(6) whereas in the Cause title of the

suit, the plaintiff has given address as residing at Muranjan House, Shri Hanuman Mandir Marg, Andheri (East), Mumbai 400 072. After having considered this fact, Court comes to the conclusion that in the Assessment Bills there are two Assessment Numbers and different addresses are given. Therefore, it is not known to the Court which Assessment Bills pertain to the suit structure. There is no other documentary evidence produced by the Plaintiff showing these Assessment Bills pertain to the suit structure. When the Plaintiff could not show these Assessment Bills pertain to the suit structure, then certainly the Court cannot give indulgence in the matter and on the basis of the Assessment Bills, action of the Defendants certainly cannot be stayed. These Assessment Bills seems to be not authenticated much less somewhat doubtful and appears to be not pertain to the suit structure. Hence, this documentary evidence, at this stage, is not acceptable by the Court.

In the circumstances, the second submission of Mr. Godbole also deserves to be rejected.

13. That takes me to the last submission that, in any case, the court below ought to have granted injunction restraining the respondents from entering into the disputed property for construction or widening of road since the property has not been acquired by them. According to Ms. Bhagalia, learned Counsel for the respondent, the title of the appellant is not clear and if they find that the appellant holds title in respect of the disputed property, they would follow the procedure before taking possession and entering into the suit property for the purposes of the construction of the road. She further submitted that for demolition of the unauthorised structures, the Authority need not wait for acquisition of the land. The Authority has made it clear in the affidavit dated 24.2.2006 filed in the reply to the notice of motion. In paragraph 8 of the said affidavit, it is stated that in the event any private land or structures are affected by the project, in that event, as per the policy of the respondents, such owners of the land affected by the road widening are compensated either by TDR/FSI to enable the land owners after verifying their documents and in such circumstances, after demolition of the project affected structures, they acquire the land u/s 299 of the Act of 1888 and they are paid adequate compensation for the same. In view of the statement of Ms Bhagalia, made in the light of the statements made in the aforesaid affidavit dated 24.7.2006, the last submission of Mr Godbole also deserves to be rejected. In the circumstances this appeal from order is rejected.

14. At this stage Mr Godbole, learned Counsel for the appellant, prays for stay of the orders, impugned in this appeal for a period of four weeks. Though Ms Bhagalia, learned Counsel for the respondent, vehemently opposed the prayer, I am inclined to grant stay for a limited period of four weeks, particularly in view of the fact that so far the Authority has not initiated the acquisition proceedings. In the circumstances, the impugned orders shall remain stayed for a period of four weeks from today.