

(2009) 01 SC CK 0120

In the Supreme Court Of India

Case No : Civil Appeal No. 392 of 2009 (Arising out of Special Leave Petition (Civil) No. 21543 of 2006)

Prakash Harishchandra Muranjan

APPELLANT

Vs

Mumbai Metropolitan Region Development Authority and
Another

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Constitution of India, 1950 — Article 136
Mumbai Metropolitan Regional Development Authority Act, 1974 — Section 4A
Mumbai Municipal Corporation Act, 1988 — Section 347, 351

Citation : AIR 2009 SC 2082 : (2009) AIRSCW 1912 : (2009) 3 AWC 2437
Supp : (2009) 3 BomCR 377 : (2009) 2 JT 132 : (2009) 1 SCALE 4 : (2009) 3 SCC 432

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : V.N. Ganpule, S. Biswajit Meitei, Naresh Kumar Gaur and Ashok Singh, for the Appellant; A.S. Bhasme, Sanjay Kr. Dubey and Brajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Ganguly, J.—Leave granted.

2. The Appellant impugns the judgment and order dated 23.11.2006 passed by a learned Single Judge of the High Court of Bombay in an appeal from Order No. 688 of 2006 of City Civil Court, Mumbai whereby the learned Judge rejected the application for injunction after a detailed judgment dated 23.8.2006.

3. The City Civil Court, Mumbai in a detailed judgment, came to a finding that the Plaintiff- Appellant herein failed to show that the suit structures existed prior to datum line i.e. prior to 1962 and no Sanctioned Plan of the suit structure was produced before the Court. The documentary evidence, produced by the Plaintiff-Appellant was discrepant in that the Assessment Numbers and the addresses did not tally.

4. Further finding of the City Civil Court, Mumbai was that the Appellant could not produce any documentary evidence to link the assessment documents with the suit structure and thus the Court held that the Appellant failed to make out any prima-facie case for grant of injunction.

5. Virtually on those findings, the prayer for injunction was concurrently refused by the High Court.

6. Apart from those two proceedings, other proceedings were also initiated in respect of the structures in question as would appear from the facts discussed below.

7. The Appellant claims to be one of the owners of land measuring 485 square yards, bearing Survey No. 35, Hissa No. 1 (Part), C.T.S. No. 688, situated at Saki Vihar Road, Kilick Nikason Marol, Andheri (East), Mumbai- 40007 and a Chawl standing thereon and the Appellant claims that his father constructed the same Chawl in the year 1956 and the shops therein were let out to various tenants on rent.

8. One of the tenants Chetan Prakash Jain received a notice u/s 351 of the Mumbai Municipal Corporation Act (hereinafter `the said Act'), from the second respondent who had issued the same in purported exercise of the powers delegated to him u/s 4A of the Mumbai Metropolitan Region Development Authority Act, 1974 (hereinafter `the Act of 1974'). The noticee was asked to show cause why the shop in his possession be not demolished since it has been constructed in contravention of the provisions of Section 347 of the said Act.

9. That notice was replied to by Chetan Prakash Jain to the effect that the structure in question was in existence much prior to the date of the notice and hence the same is a tolerable structure under the said Act and is not required to be removed.

10. The grievance of the Appellant is that the second Respondent without giving the noticee an opportunity of being heard, passed an order directing him to remove the portion of the structure to be affected by the road widening scheme and to hand over the possession of the same to the first Respondent. The further grievance is that no such notice was given to the other tenants and/or adjoining shop owners in the said Chawl.

11. Thereafter, in the second week of March, 2006 some of the officers and the representatives of the Respondent No. 1- Corporation allegedly fixed boundary marks in and around the said Chawl on the basis that the area covered under the said boundary wall would be required for the widening of the road.

12. The Appellant and the other owners of the Chawl through the notice of their Advocate dated 22.3.2006 claimed to have placed on record correct facts and documents and complained against such activities of the Respondent.

13. The second Respondent while exercising the powers u/s 351 of the said Act

directed Chetan Prakash by a notice dated 3.4.2006 to remove the suit structure, inter- alia, on the ground that the same is unauthorized and not tolerable.

14. Against the said notice, a Writ Petition being W.P.(L) No. 868 of 2006 was filed on 12.4.2006 by the Appellant which was disposed of on the same very day by the Division Bench of the Bombay High Court, inter-alia, holding that the first Respondent is to give notice to the Petitioner No. 1 who will accept the notice on behalf of the Petitioners and all co-owners and directed the first Respondent to pass appropriate order according to law. The Court made it clear that the construction shall not be demolished without notice and hearing the Petitioner No. 1.

15. Thereafter, the second Respondent on 13.4.2006 sent several notices to the Appellant and other tenants u/s 351 of the said Act asking the occupants to vacate the suit premises and to remove the suit structure.

16. The case of the Appellant is that even though the said notices were replied to, but no hearing was given to them nor were they given inspection of those orders by which the powers were delegated upon the second Respondent by the first Respondent.

17. The second Respondent, it is alleged, without hearing the Appellant passed orders on 13.5.06 declaring the suit structure to be illegal and directing the Appellant and the tenants to remove the construction within seven days.

18. Challenging the same, the Appellant filed L.C. Suit No. 2238 of 2006, out of which the present proceedings arise, before the Bombay City Civil Court praying for interim order. The learned Trial Judge rejected on 19.5.2006 the prayer for ad-interim injunction holding that the plaintiff failed to make out any prima facie case on any of the grounds urged before the Court.

19. Against the said order, an appeal was filed before the High Court and the High Court took up the matter for hearing on 18.7.2006 and by granting an interim injunction remanded the matter to the Trial Court for consideration of injunction prayer afresh.

20. Thereafter, the Trial Court heard the matter and dismissed on 23.8.2006 the prayer for interim injunction and the said order has been upheld by the High Court under the impugned judgment dated 23.11.2006.

21. In the background of these facts, the only legal issue which arises is:

Whether the second Respondent, the Executive Engineer of Mumbai Metropolitan Region Development Authority (hereinafter, the said Authority) is entitled in law to issue notice dated 13.04.2006 u/s 351 of the said Act. It was further argued since the second Respondent has no authority to issue the notice, all steps taken pursuant to such notice are illegal and should be set aside by this Court.

22. These questions have been very adequately dealt with in the judgment of the High Court. The High Court after considering the provisions of the Act of 1974

and specially the amendment made to it in 1989, came to a finding that the Executive Engineer can exercise or perform the functions and duties delegated to him by the Metropolitan Commissioner. The High Court noted that provisions for delegation were statutorily made. Therefore, notice issued by him cannot be held to be illegal. Those findings have not been challenged before us during the course of argument and in view of the provisions for statutory delegation, which have been noted in the judgment of the High Court, we do not think there is any merit in the aforesaid legal contention. No other argument is made before us. It is well settled when prayer for injunction is concurrently refused by two courts, this Court, in a proceeding under Article 136 of the Constitution, will be very slow and cautious before it can take a different view. This Court can only do so, if it finds that the judgment of the court below is perverse. In the facts of this case, discussed above, the court cannot arrive at such a finding. Therefore, we do not find any merit in this appeal, which is accordingly dismissed. No costs.