(2006) 09 BOM CK 0003

In the Bombay High Court

Case No : Appeal From Order No. 506 of 2006

Sidharam M. Yanagandul and Another — APPELLANT

Vs

State of Maharashtra and Another — RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:
Mumbai Municipal Corporation Act, 1888 — Section 3, 351

Citation : (2007) 2 ALLMR 317 : (2007) 4 BomCR 444

Hon'ble Judges : Karnik D.G., J

Bench : Single Bench

Advocate : Geeta Joglekar, Prashant G. Sawant, for the Appellant; A.R. Patil, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Karnik D.G., J.—This appeal is directed against the order dated 10/7/2006 passed by the City Civil Court, Mumbai refusing to grant ad interim relief of an injunction restraining the Municipal Corporation from demolishing the unauthorised structure.

2. There are three shops exist in the property bearing final plot No. 205, Rakshe Chawl, Dadar (East), Mumbai. Appellant is a tenant occupying one of the shops. Behind the three shops there is a temporary shed with brick -masonary walls and G.I. sheet roof. The said temporary shed (for short the suit shed") is the subject matter of this appeal.

3. On 5th June, 2006 the respondent municipal corporation issued a notice to the appellant u/s 351 of the Mumbai Municipal Corporation Act (for short the Act) to show cause why the suit shed which was constructed without the permission of the Planning Authority should not be demolished. By a reply dated 8th June, 2006 the appellant submitted that he was in possession of the suit shop as a tenant since the year 1974. He further submitted that suit shed was not unauthorised but was assessed for the municipal taxes since 1979 and therefore

was an authorized structure and cannot be demolished. After hearing the appellant the respondent came to the conclusion that the suit shed was unauthorised and was erected after the year 1962. The unauthorised structures erected prior to 17th April, 1962 -datum line- only were protected as per the Government resolution. As the suit shed was erected unauthorisedly after 17th April, 1962 it was liable to be demolished. Aggrieved by the order of the respondent the appellant filed a suit bearing Suit No. 3035 of 2006 in the City Civil Court, Mumbai for an injunction restraining demolition. In the suit the appellant took out a motion bearing N.M. No. 2597 of 2006 for an interim injunction restraining the respondents from demolishing the suit shed pending hearing and decision of the suit. By an order dated 10th July, 2006 the learned Judge of the City Civil Court declined to grant an ad interim injunction holding that no prima facie case was made out. That order is impugned in this appeal.

4. Learned Counsel for the appellant submitted that sufficient evidence was produced before the trial Court to show that the suit shed was authorised and was in existence at least for last of 18 years. He therefore submitted that the suit shed cannot be demolished as an unauthorised structure. He referred to and relied upon a decision of this Court in Shri Dashrath Sahadeo Khade Vs. The Municipal Corporation of Greater Mumbai, Anil Shirodkar and Mohan Pai, . Learned Counsel for the appellant invited my attention to the three documents namely the rent receipt dated 17th May, 2006 issued by the landlord, a letter of the collector (of state excise) approving use of the suit shed as a permit room (liquor bar) and a letter of the municipal corporation dated 2nd June, 1979 giving the break up of the assessment of the structures constructed on the property.

5. I have perused the documents referred to by the counsel for the appellant. In my view, none of the document establish even prima facie, that the suit shed was constructed with the permission of the Planning Authority was in existence since prior to 17th April, 1962. The rent receipt dated 17th May, 2006 only mentions that the shop No. 3 was let out to the appellant. The rent receipt does not mention that the suit shed which is behind the shops, formed part of the rented premises or was ever let out.

6. The letter of the municipal corporation dated 2nd June, 1979 gives the description of the structures assessed for property tax for the year 1978-79. Structure No. 4 is the shop No. 3 wherein appellant is running the Santosh Bar. Rateable value of the shop is shown of Rs. 40/-. Rateable value of the suit shed (structure No. 4-A) is shown as Rs. 33.30/-. Relying upon this letter counsel for the appellant submitted that the fact that the suit shed was assessed to property tax would show that the suit shed was an authorised structure constructed after obtaining appropriate permission and in event the assessment of it for property tax would amount to regularisation of an unauthorised construction. I am unable to agree. In my view, any structure, whether authorised or unauthorised, constructed on a property within the limits of a municipal corporation can be assessed to municipal taxes. Mere fact that a structure which is erected without

the permission of the Planning Authority and unauthorisedly is subsequently assessed to the property tax by the municipal corporation would not change the unauthorised character of the structure nor would make the structure authorised from the date of assessment. Of course, the fact that the structure is assessed to property tax for a long time may be a relevant circumstance while considering the evidence on whether the structure is authorised or unauthorised especially when sanctioned plans are not available because of long passage of time. The weight to be attached to such evidence would depend upon the facts and circumstances of each case. However once it is proved that the structure is unauthorised, the mere fact that the structure is assessed to property tax would not have the effect of deemed regularisation or structure being treated as authorised.

7. Reference may be made to the decision of this Court in Tata Hydro Electric Power Supply Co. Ltd. Vs. The Municipal Commissioner of Greater Bombay, . In that case the question involved was whether the municipal corporation was entitled to assess for property tax the structures which were unauthorisedly erected on the land. Relying upon the earlier decision of the Supreme Court in National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, and of this Court in Ramji Keshavji Contractor Vs. The Municipal Commissioner of Greater Bombay, and after considering the definition of the word ''premises'' contained in Section 3(gg) of the Bombay Municipal Corporation Act this Court held that the municipal corporation was entitled to levy property tax not only in respect of the land but also on structures, whether authorised or unauthorised. It was specifically held that even when a trespasser on the land erects a structure, the municipal corporation would be entitled to take that into consideration in fixing rateable value of the property. In other words, municipal corporation is entitled to fix rateable value and impose the property tax even in respect of an unauthorised structure. If so, mere fact that rateable value in respect of a structure has been fixed would not, by itself, prove that the structure was authorised nor would it amount to regularisation of the structure. This is because municipal corporation is authorised to fix rateable value of not only for the authorised structures but also in respect of unauthorised structures erected on the land. In my view, therefore the letter dated 2nd June, 1979 showing that the suit shed was assessed to property tax, would not, by itself prove that the suit shed was an authorised structure.

8. The last document relied upon by the counsel for the appellant is the letter of the Collector (undated), but which appears to have been issued in the year 1993-94. The said letter states that in pursuance of the application of the appellant dated 5th November, 1993 he was permitted to use an additional area as shown in the plan as a permit room i.e. as a liquor bar. Under the Bombay Excise Rules premises which are to be used as a permit room (liquor bar) are required to be approved by the Collector and the plan of the premises is required to be submitted to and approved by the collector. Copy of the plan annexed to the aforesaid letter of the Collector shows that the appellant was permitted to

use suit shed as an additional area for the liquor bar with effect from 24th December, 1993. Permission to use the suit shed as a permit room was granted for the first time in the year 1993. This letter of the Collector, therefore, would not show the existence of the suit shed prior to 24th December, 1993. If at all, it would indicate that the suit shed was constructed or came in possession of the appellant sometime around November, 1993, when the permission of its use as a permit room was allowed for the first time.

9. Thus there was no evidence before the City Civil Court to show that the suit shed structure was in existence prior to 17th April, 1962. There was also no evidence to show that the suit shed was erected after obtaining due permission of the Planning Authority. Therefore, the structure was not shown to be authorised nor constructed prior to the datum line.

10. The decision of this Court in Shri Dashrath Sahadeo Khade v. The Municipal Corporation of Grater Mumbai (supra) is distinguishable on facts and is of no assistance to the appellants. In the said decision this Court came to the conclusion that the suit shop was in existence since prior to the year 1961-62 i.e. prior to the datum line. This finding of fact was reached on the basis of evidence led in that case. In view of the fact that the structure was proved to be in existence prior to the datum line dated 17th April, 1962, this Court protected the structure by an order of injunction. In the present case there is no evidence on record to show that the structure was in existence prior to 17th April, 1962. In the circumstances there is no merit in the appeal which is dismissed in limine.

