
(2013) 10 BOM CK 0219

In the Bombay High Court

Case No : Appeal From Order No. 1154 of 2013 with Civil Application No. 1367 of 2013

Sumitra Shashikant Khokhani, Vishesh Shashikant Khokhani
and Sanjay Shashikant Khokhani

APPELLANT

Vs

The Municipal Corporation of Greater Mumbai and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) 3 ALLMR 761 : (2013) 6 MhLj 817

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : J.S. Kini assisted with Mr. Suresh Dubey, for the Appellant; S.K. Sonawane, for Respondent No. 1, Mr. G.S. Godbole instructed by Mr. S.A. Sawant a/w Mr. H.V. Kode for Respondent Nos. 3, 4 and 5 and Mr. P.s. Dani instructed by Mr. J.S. Chandnani a/w Mr. Samir Suryawanshi, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—This Appeal from Order as the learned Judge by impugned order dated 24 September 2013 dismissed Notice of Motion filed by the Appellants along with Suit whereby the challenge is to the notice issued u/s 354 of Mumbai Municipal Corporation Act (MMC Act) for want of specific service to the occupier-Plaintiffs. A prayer is also made for a direction to reconstruct room No. D-4, area admeasuring 240 sq. ft., situated at CTS No. 15 and 16, Amrut Bhuvan, Khokhane Lane, Ghatkopar (E), Mumbai. The other tenants/occupants of the premises, the building being dilapidated condition have already surrendered the tenancy to the landlord and vacated the premises. The Appellants-occupants who by this Suit and motion want to obstruct/withheld the project/development of other area covering 1455 sq. meters. The agreement of development, though not in dispute, cannot be the subject matter of this suit basically when challenge is only to the notice issued by the Municipal Corporation, as recorded above. The injunction is claimed for the entire area and not restricted to 240 sq. ft of the room in question. The issue of development agreement of total area is not the

subject matter of the present suit and it cannot be.

2. The room in question was already demolished. The prayer is to reconstruct the same. The interim relief granted by the learned Judge pending the disposal of the Notice of Motion. The submission is therefore made that the same should be continued pending the Suit is unacceptable, in view of admitted position on record.

3. The learned Judge, in view of above, has considered the rival contentions and basically the factual position of non existence of the premises and the urgent requirement of the development of the property in question. The appellants' occupation was that of tenants only. The dispute between the landlord and the tenants are going on. The eviction decree is already passed against the Appellants. The same is subject to Appeal, if any, in no way sufficient to overlook actual position of the demolition of the premises by the Corporation after giving notice to the concerned.

4. Neither the landlord-owner complaining about the notice nor the Developer. The illegality, if any, for want of service of notice just cannot be the reason to accept the case of the Appellants-Plaintiff to grant injunction so sought, basically when the premises in question (Room No. D-4) itself is not in existence. The rights of the tenants in absence of the premises in question, is again another facets which just cannot be overlooked, at this interim stage of the proceedings, when the prayer is against the developer, as well as, against the Corporation, apart from owner to reconstruct the premises i.e. 240 sq. ft. area.

5. The illegal demolition even if any, is again a matter of trial. When Court wants to exercise its discretion and especially in the background so referred above, the principles i.e. prima facie case, the balance of convenience, irreparable loss/injury and equity, just cannot be overlooked. The learned Judge, in my view, has considered in detail all these principles and rightly come to the conclusion.

6. The submission that if no proper notices are issued to the occupiers, it will be difficult for the Corporation and/or such other authority to take and/or initiate action against the defaulters, as contemplated u/s 354 of MMC Act and other provisions, is also unacceptable. It is not the case that there was no notice whatsoever issued and the Corporation demolished the structure. This issue therefore in no way needs to be adjudicated at this stage of interim order. The suit is pending.

7. The dispute between the landlord and the tenants in the matter and issues arising out of the same and even rights based upon the development agreement in question, just cannot be extended in the present suit which is admittedly based upon the notices u/s 354 of MMC Act. The structure if not in existence, even the effect of such notice or its service and/or purpose of notice, needs to be tested at the trial. No case for any mandatory injunction as prayed. The scope and purpose of such suit as well as the motion cannot be extended at the instance of the Plaintiffs in such fashion. The irreparable injury/loss, the balance

of convenience and equity in the background referred above, in my view, also lies in favour of the Respondents and certainly not in favour of the Appellants-Plaintiffs.

8. The learned counsel appearing for the Developer states that they are willing to keep 240 sq. ft. area subject outcome of the dispute between the landlord and Defendant no. 6 in the newly constructed premises.

9. In the result, Appeal from Order as well as Civil Application stand dismissed. No costs. The learned counsel appearing for the Appellants submits that the interim order granted by the Trial Court in terms of prayer clause (b) which is in force till this date be continued. Considering the reasons so given by the learned Judge as well as reasons so recorded above, I see no case is made out to continue such interim order to halt the whole project at the instance of Appellants whose claim in the suit is only to the extent of area 240 sq. ft.. So also in view of the statement made by the learned counsel appearing for the developer, as recorded above, I see no case is made out for continuation of any injunction. Hence, the prayer is rejected.