2022:BHC-AS:32470

HIGH COURT OF JUDICATURE AT BOMBAY

S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 30446 OF 2022
IN
FIRST APPEAL NO. 1117 OF 2018

Minal Co-Operative Housing Society Limited ...Applicant/ Original Respondent No.1

Versus

Sushma A. Gupta & Anr. ...Respondent/ Original Appellant

Mr. Uzair Kazi a/w Ankita Sharma i/b YMK Legal, Advocates for Applicant/Original Respondent No.1.

Mr. Mayur Khandeparkar a/w Mr. Rashmin Khandekar a/w Ms. Karishni Khanna i/b Mr. Bishwajeet Mukherjee a/w Mr. Meet Gandhi a/w Ms. Humera Syed a/w Mr. Mandar Joshi a/w Ms. Devanshi Jagad, Advocates for Respondent No.1

Mr. Rajiv Chavan a/w Mr. Om Suryavanshi a/w Santosh Parad, Advocate for Respondent/MCGM.

CORAM : R.I. CHAGLA, J.

DATE : 21ST DECEMBER, 2022.

ORDER :

1. Heard learned Counsel for the parties.

2. By this Interim Application, the Applicant is seeking vacation of status-quo order in respect of the suit structure.

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HIGH COURT OF JUDICATURE AT BOMBAY

3. Mr. Khandeparkar, learned Counsel appearing for the Applicant has submitted that by virtue of the status-quo order passed by this Court on 22nd March, 2018, Paragraph 4 of the operative part of the impugned Judgment and Order dated 19th January, 2018 which had contemplated removing or demolishing the notional connection which the Respondents / Defendant Nos. 4 to 7 had with the Applicant-Society / Plaintiff's building and to shift BSES Sub-station to its original position cannot be given effect to. Further, Paragraph 3 of the operative order of the impugned Judgment and Order dated 19th January, 2018 by which the Defendant No.13/MCGM has been directed to take necessary steps to implement its order dated 7th November, 2006 also cannot be given effect to.

4. Mr. Khandeparkar has referred to the Notice issued by the MCGM on 12th January, 2022 which Notice is under Section 354 of the Bombay Municipal Corporation Act and by which the Applicant-Society has been directed to pull down its structure. He has submitted that the subject structure of the Applicant-Society is connected to the building of the Respondents/Defendant Nos. 4 to 7 by the said notional connection. He has referred to the photographs showing that the notional connection or the Respondents / Defendant

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HIGH COURT OF JUDICATURE AT BOMBAY

Nos. 4 to 7 being connected to the subject structure of the Applicant-Society. He has submitted that this notional connection was the subject matter of a regularization application which had been considered by the MCGM. By Order dated 7th November, 2006 MCGM directed that the access from the building of the Defendants and to the portion of the slab near the notional connection to be closed permanently by the Defendants.

5. Mr. Khandeparkar has submitted that the Applicant-Society has by virtue of the status-quo order not been in a position to comply with the Notice of the MCGM. This is despite the notice being issued under Section 354 of the MCGM dated 12th January, 2022 considering the subject structure of the Applicant-Society to be in ruinous and dilapidated condition and likely to collapse and cause damage to the life and property of the persons occupying and residing or passing by the same. In view thereof, the present Application has been taken out for modification of the status-quo order to exclude the said notional connection which may require to be pull down in order for the Applicant-Society to comply with the notice of the MCGM dated 12th January, 2022.

6. Mr. Uzair Kazi, learned Counsel for the Respondents has

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HIGH COURT OF JUDICATURE AT BOMBAY

submitted that the status quo order had been passed by this Court dated 22nd March, 2018 was upon considering the impugned Judgment and Order of the City Civil Court as well as ground raised in Appeal Memo. He has submitted that the sole purpose of the modification of the status-quo order as sought for by the Applicant-Society is to enable the Applicant-Society to redevelop their subject structure and that too without disclosing the redevelopment agreement as well as the plans thereto. He has submitted that though the Notice of the MCGM was issued on 12th January, 2022, the present application is being made much belatedly in December, 2022.

7. Mr. Kazi has submitted that the issues which were determined by the City Civil Court included the issues with regard to the Agreement dated 2nd December, 1989 and whether the Plaintiffs prove that the said Agreement was illegal, bad in law, contrary and in violation of provision of the Maharashtra Ownership Flats (Ownership, Regulation of Construction, Sale, Management and Transfer) Act, 1963, which was answered in the negative. The issue, as to whether the Plaintiffs prove that they are entitled for declaration that the purported execution of the Agreement dated 2nd December, 1989 is illegal, invalid, null and void and not binding

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HIGH COURT OF JUDICATURE AT BOMBAY

upon them was also answered in negative. He has submitted that the said Agreement on the basis of which the construction of the building by the Respondents herein was carried out has been upheld by the lower Court. He has submitted that there was no issue framed in so far as the legality of the said notional connection and despite which the City Civil Court has decided this against the Respondent herein by directing them to remove the notional connection. He has submitted that the relief now sought for would result in the notional connection being pulled down in breach of the status-quo order and that the Applicant-Society would be in a position to develop the land appurtenant to the notional connection, thereby prejudicing the rights of the Respondents/Original Appellants to the subject land.

8. Mr. Rajiv Chavan learned Senior Counsel appearing for the MCGM has submitted that the Notice issued under Section 354 of the Municipal Corporation Act requires to be complied with. He has submitted that the Notice has not been impugned by the Respondents herein. The subject structure is in ruinous and dilapidated condition and likely to collapse and accordingly immediate compliance with the said Notice is required. He has referred to the findings in the impugned Judgment and Order dated 19th January, 2018 and in

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HIGH COURT OF JUDICATURE AT BOMBAY

particular Paragraph 59 thereof, wherein it has been held that the Defendant Nos. 4 to 7 did not produce any documentary evidence on record to prove their pleadings that they had shifted BSES Sub-station with the necessary permission of concerned authority as well as to prove that notional connection between the Plaintiff-Society building is made as per approval/sanctioned plan. The contention that there was earlier such notional connection is not sufficient to hold that the notional connection constructed by Defendant Nos. 4 to 7 is legal.

9. Having considered the rival submissions, it is noted that the Applicant-Society is intending to comply within the Notice issued by MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act. The Notice is issued on the premise that the subject structure belonging to the Applicant-Society is in a ruinous and in dilapidated condition and likely to cause damage to the life and property of the persons occupying and residing or passing by the same.

10. The status-quo order had been passed by this Court way back on 22nd March, 2018. This Court having perused the impugned Judgment and Order of the Court below as well as the grounds raised

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HIGH COURT OF JUDICATURE AT BOMBAY

in the Appeal Memo, had found it necessary to direct maintaining of status-quo. However, the subsequent development i.e. the Notice issued under Section 354 of the Municipal Corporation Act, 1888 had not fallen for consideration before this Court when the status-quo order had been passed.

11. There have been submissions on the merits of the impugned Judgment and Order which this Court at this stage is not required to go into. However, it is necessary to note that there have been the findings in impugned Judgment and Order of the City Civil Court that the Defendant Nos. 4 to 7 failed to prove that the notional connection between Plaintiff-building is made as per approval/sanctioned plan. This would also be the case with regard to the of shifting of the BSES Sub-station, requiring the necessary permission of concerned authority.

12. In the operative part of the Judgment and Order dated 19th January, 2018, the City Civil Court had directed the MCGM to take necessary steps to implement its order dated 7th December, 2006. By that order, the notional connection was considered by the MCGM and the MCGM directed that the access from the building of the Defendants to the portion of the slab near notional connection to be

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HIGH COURT OF JUDICATURE AT BOMBAY

closed permanently by the Defendants. Further, in the operative part of in the impugned Judgment and Order, the Defendant Nos. 4 to 7 have been directed to remove or demolish the notional connection with the Plaintiff's building and shift BSES Sub-station to its original position.

13. Considering that the Applicant-Society is obliged to comply with the Notice issued by the MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act and by virtue of which the notional connection between the Building of the Respondents/Original Defendants and the subject structure of the Applicant-Society / Original Plaintiff may be pulled down, the Status-quo order passed by this Court on 22nd March, 2018 requires to be modified. Hence, the following order is passed :

i) The Status-Quo order dated 22nd March, 2018 passed by this Court shall not include status-quo to be maintained in respect of the notional connection between the subject structure belonging to the Applicant-Society and the building of the Respondents herein as shown in the photograph at Exhibit-P, Page 41 of the present Interim Application.

ii) It is clarified that the Applicant-Society by demolishing

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HIGH COURT OF JUDICATURE AT BOMBAY

the subject structure in compliance with the Notice issued by the MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act will not be in breach the status-quo order in the event the notional connection between the subject structure and the building of the Respondents is pulled down.

iii) This order is without prejudice to the rights and contentions of the Respondent / Original Appellants including that they have a legal right to the land appurtenant to the said notional connection between the subject structure and the building of the Respondents as well as their contention that the construction beyond FSI of 6550 sq. ft. is authorized.

iv) The status-quo in so far as the reminder of the operative part of the impugned Judgment and Order dated 19th January, 2018 shall be maintained.

v) The Interim Application is accordingly disposed of in above terms.

vi) The First Appeal had been permitted to be heard at the admission stage and accordingly the First Appeal shall be

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HIGH COURT OF JUDICATURE AT BOMBAY

listed on 19th January, 2023 at 2.30 p.m.

Mentioned at 2.30 p.m.

13. Mr. Kazi, learned Counsel appearing for the Appellants has sought stay of this order.

14. Considering the findings of this order as well as the observations with regard to the compliance of the Notice issued by the MCGM under Section 354 of the Municipal Corporation Act, 1888, the Application for stay of this order, is rejected.

[R.I. CHAGLA, J.]

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