

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.208 OF 2018
ALONG WITH
CIVIL APPLICATION NO.270 OF 2018

1. M/s. B.D. Jogani & Company,]
A duly registered Partnership Firm,]
(Previously a Sole Proprietary Concern]
of Shri Bhanwarlal D. Jogani), having]
its address at 24, Ground Floor,]
Jaywant Industrial Estate, Tardeo Road,]
Opp. Cross Roads, Mumbai - 400 034.]
2. Bhanwarlal D. Jogani,]
of Mumbai, an Adult Indian Inhabitant,]
the Partner of M/s. B.D. Jogani & Company]
(Previously a Sole Proprietary Concern]
of Shri Bhanwarlal D. Jogani), having]
its address at 24, Ground Floor,]
Jaywant Industrial Estate, Tardeo Road,]
Opp. Cross Roads, Mumbai - 400 034.]
3. Lalit Bhanwarlal Jogani,]
of Mumbai, an Adult Indian Inhabitant,]
carrying on business as a Partner in the]
name and style of M/s. B.D. Jogani and]
Company at and from 24, Ground Floor,]
Jaywant Industrial Estate, Tardeo Road,]
Opp. Cross Roads, Mumbai - 400 034.] Appellants

Versus

1. The Municipal Corporation of Greater, Mumbai]
A Body, constituted under the provisions]
of Mumbai Municipal Corporation Act,]

- 1888, having its Head Office at Mahapalika]
Bhavan, Mahapalika Marg, Opp. C.S.T.,]
Mumbai 400 001.]
2. Assistant Engineer (B & F), M.C.G.M.,]
in his capacity of a Designated Officer,]
I 'D' Ward, Municipal Office, Jobanputra]
Compound, Nana Chowk, Grant Road (W),]
Mumbai - 400 034.]
3. Jaywant Industrial Premises Co-op.]
Society Ltd.,]
A duly registered co-operative Society]
under the provisions of the Maharashtra]
Co-operative Societies Act, 1960 and the]
Rules framed thereunder, having its]
Registered address at 24, Tardeo Road,]
Mumbai - 400 034.] Respondents

Mr. Vineet Naik, Senior Counsel, a/w. Mr. Vishal Thaker and Ms. Anjali Trivedi, I/by Mr. Vishal Thaker, for the Appellants-Applicants.

Mrs. Madhuri More for the Respondent-MCGM.

Mr. Prasad Dhakephalkar, Senior Counsel, a/w. Mr. Karl Tamboli, Mr. Raghav Gupta, Mr. Kashish Mainkar and Ms. Ankita Sahgwan, I/by M/s. Wadia Ghandy & Co., for Respondent No.3-Society.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 9TH OCTOBER, 2018.

PRONOUNCED ON : 12TH OCTOBER, 2018.

JUDGMENT :

1. Heard Mr. Naik, learned Senior Counsel for the Appellants-

Applicants; Mrs. More, learned counsel for the Respondent-MCGM; and Mr. Dhakephalkar, learned Senior Counsel for Respondent No.3-Society.

2. The Appellants are the Original Plaintiffs, whose Notice of Motion No.1687 of 2017 filed in L.C. Suit No.1058 of 2017 came to be dismissed by the City Civil Court, Mumbai, vide its order dated 17th February 2018. Hence, being aggrieved thereby, the Appellants have preferred this Appeal.

3. The said Notice of Motion was taken out by the Appellants, seeking interim injunction, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the notice dated 11th October 2013 and the order dated 22nd April 2017, passed under Section 351 of the Mumbai Municipal Corporation Act, 1888.

4. The case of the Appellants is that, they are the holders of Industrial Unit Nos.15, 16, 23, 24 and 25, which are located on the Ground Floor of the building known as “Jaywant Industrial Premises”. By virtue of the 'Deed of Assignment', dated 24th December 2001, executed by M/s. Four Seasons Air Conditioning Company, Appellants have become entitled to the suit premises and the open space in front thereof. According to them, there was an entrance from the Northern side, i.e. rear side of the suit building, since inception. However, in or

about 2012, the office bearers of Respondent No.3-Society, in which the suit Units are situate, started harassing the Appellants by lodging various proceedings and making false complaints to the Respondent-Municipal Corporation, alleging that the said construction is illegal and unauthorized. In pursuance thereto, the impugned notice dated 11th October 2013 came to be issued to the Appellants, alleging that they have carried out following unauthorized work :-

- (i) *Unauthorized entrance by creating door, admeasuring 2 mtrs. x 1.5 mtrs. and steps (stairs), admeasuring 2.5 + 2½ mtrs. X 1.4 mtrs.*
- (ii) *Unauthorized windows, admeasuring (a) 2 mtrs. x 1.1 mtr.; (b) 2 mtrs. X 1.9 mtrs.; (c) 2 mtrs. x 1.9 mtrs.; (d) 2 mtrs. X 1.1 mtr., as shown in the sketch*

5. According to the Appellants, the above-said notice was issued on incorrect facts and false assumptions. Hence, they have replied the same contending, *inter alia*, that, the impugned construction is not at all illegal or unauthorized, but it was in existence since the year 1996 and it was carried out after obtaining the requisite permission and getting the 'Plan' sanctioned therefor. Despite that, the Designated Officer of the Respondent-Municipal Corporation has passed an order dated 22nd November 2014, directing the Appellants to remove the said construction or to face an action for its demolition.

6. The Appellants had, therefore, filed Writ Petition No.10804 of 2014, challenging the said order. It came to be allowed and the Designated Officer of the Respondent-Municipal Corporation, who heard the matter, was directed to pass a fresh order. Accordingly, this order dated 22nd April 2017 came to be passed, after giving fresh hearing to the Appellants and again holding the impugned structure to be illegal and unauthorized and directing the Appellants to remove the same or to face the action for its demolition.

7. Being aggrieved thereby, the Appellants have approached the Trial Court; however, the Trial Court has also, vide its impugned order, refused the interim relief, by dismissing the Notice of Motion and hence, the Appellants are constrained to approach this Court.

8. The main contention of learned Senior Counsel for the Appellants is that, the construction impugned in the notice is not at all illegal and unauthorized, but it was carried out after getting the 'Plans' sanctioned from the Respondent-Municipal Corporation. To substantiate this submission, learned Senior Counsel for the Appellants has mainly relied upon the letter dated 15th December 1995, issued by the Architect Ulhas J. Pagnis to the Executive Engineer (Building Proposal) of the Respondent-Municipal Corporation, showing that the 'Plans' for the minor changes to the suit Units and other modifications to the upper

floor in the suit building were permitted. The subject-matter of the said letter goes to show that, permission was sought to carry out the minor alterations and amalgamation of Industrial Galas, in which it was stated that the proposed work consists of demolition of internal partition wall and amalgamating two Galas. As per the said letter, the Architect had also proposed to demolish the existing brick-wall and proposed the glass partition at that place. According to learned Senior Counsel for the Appellants, this letter and the order dated 1st March 1996 passed thereon by the Executive Engineer (Building Proposal) clearly goes to show that, the 'Amended Plans' submitted by the Architect for the above-mentioned works were approved. It is urged that, in view of this letter, it is clear that the 'Plans' for the proposed construction were approved in the year 1996 itself and hence, the present notice issued by the Respondent-Municipal Corporation, alleging that such construction is unauthorized is not at all correct.

9. In order to verify as to whether the 'Plans' of the year 1996, on which the Appellants are placing reliance to prove that the construction of the glass door or the windows alleged in the impugned notice as illegal, were really sanctioned or not, learned counsel for the Respondent-Municipal Corporation was directed to take the instructions and file the affidavit. Accordingly, one Mr. Abhas S. Bagayatkar, the Assistant Engineer, working in the 'Building Proposal', "D" Ward, of the

Respondent-Municipal Corporation, has filed his affidavit in this Court on 28th September 2018, clearly specifying that, no such 'Plans', on which the Appellants are relying, are available in the Office of the Respondent-Municipal Corporation and whatever 'Plans' the Appellants have produced before the Designated Officer and before this Executive Engineer, were also not readable.

10. In this respect, the Trial Court has also considered the 'Plans', on which the Appellants are placing reliance, and found that, the said 'Plans' nowhere show the stamp of approval by the Respondent-Municipal Corporation or even the signature of the concerned officer. It only bears the signature of the concerned Architect, but it does not bear the stamp of the approval or the signature of the concerned officer from the Office of the Respondent-Municipal Corporation. Therefore, in considered opinion of this Court, the Trial Court was justified in holding that the said 'Plans' were not sanctioned or approved. This inference can be strengthened from the affidavit filed by the Assistant Engineer Mr. Bagayatkhar in this Court.

11. Apart from that, even the permission or the sanction, on which learned Senior Counsel for the Appellants has placed reliance, i.e. the letter dated 1st March 1996 goes to show that, the permission for carrying out those minor alterations and amalgamation of the Units by

putting glass partition, was granted subject to the terms and conditions that; (i) the Appellants were to produce the Structural Suitability Certificate from the two independent Structural Engineers; (ii) Appellants were further to produce the Indemnity Bond, indemnifying Municipal Corporation against any dispute arising out of granting permission. It was further directed that, all conditions of occupation, permission letter issued under even number dated 17th July 1992, were to be complied with and the work was not to be commenced, unless obtaining clearance from the concerned Officer of the Municipal Corporation, after complying with condition Nos.1 and 2.

12. Not a single document is produced on record to show that, these conditions were complied with and the requisite clearance was obtained from the concerned Officer. Hence, the said permission, which is also not directly pertaining to the construction impugned in this notice, can be of no help to the Appellants. The said permission nowhere discloses that it was for the work of the entrance by creating the door and the steps for the purpose of opening of the windows. In such situation, it has to be held that, the construction, which is impugned in the notice, in the absence of any document showing that it was carried out after due permission, is illegal and unauthorized.

13. Learned Senior Counsel for the Appellants has then placed reliance

on the letter dated 12th April 1999, issued by the Architect Ulhas J. Pagnis to the Executive Engineer (Building Proposal), stating that, he was submitting therewith a 'Plan', along with the 'Completion Certificate', duly signed by him for necessary approval and hence, to sanction 'Completion Certificate' at an early date. It is submitted that, no such 'Completion Certificate' was issued in the stipulated time and, therefore, as laid down in the provisions under Section 353-A(2) of the MMC Act, it has to be held that, the 'deemed permission' was granted for the same. However, to say the least, this letter of Architect dated 12th April 1999 nowhere specify as to what additions or alterations he has carried out in the suit premises. It is not at all clear as to whether those alterations or additions pertain to the structure impugned in the notice. Moreover, such 'deemed permission' has to be construed strictly. When there is no evidence to show that the Appellants had complied with the conditions laid down in the letter dated 1st March 1996, then such benefit of 'deemed permission' cannot be extended to the Appellants.

14. In sum and substance, it has to be held that, the Appellants have failed to prove the legality and validity of the suit structure impugned in the notice before the Designated Officer, when the opportunity of hearing was given to them. In view thereof, the Designated Officer has, by passing a detail order, held the notice construction to be illegal and unauthorized. Even in the Trial Court, the Appellants have failed to

produce on record any document to show that the structure impugned in the notice was carried out after obtaining 'deemed permission' or getting the 'Plan' sanctioned. In this Appeal also, the affidavit filed by the Respondent-Municipal Corporation clearly goes to show that, there are no such 'Plans' of the year 1996 approved by the Respondent-Municipal Corporation, authorizing construction of the structure impugned in the notice. Under these circumstances, no protection can be granted to the notice structure, which is apparently illegal and unauthorized. The Trial Court was, therefore, justified in dismissing the Notice of Motion.

15. In Appeal from such discretionary order, no interference is warranted at the hands of this Court. The Appeal, therefore, stands dismissed.

16. In view of dismissal of the Appeal, Civil Application No.270 of 2018 does not survive and the same stands disposed off as infructuous.

17. At this stage, learned counsel for the Appellant submits that, the order of ad-interim stay, which is granted in the year 2013, is continued till today and the same may be extended for a period of four weeks, in order to enable the Appellant to approach the Hon'ble Supreme Court.

18. Learned counsel for the Respondents takes objection to the



extension of the ad-interim relief. However, considering that, the order of ad-interim stay is in existence since the year 2013, the same is extended for a period of four weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]