

**SUPREME COURT OF INDIA**

Esteem Properties P.Ltd.

Vs.

Mun.Corp.of Gr.Mumbai

C.A.No..... of 2010

(K.G.Balakrishnan CJI. Deepak Verma and Dr.B.S.Chauhan JJ.)

10.05.2010

**JUDGEMENT**

**Dr.B.S.Chauhan, J.**

1. Leave granted.

2. This appeal has been preferred against the interim order passed by the High Court of Bombay dated 8.10.2009 in Appeal from Order No.1040 of 2009. Facts and circumstances giving rise to this case are that appellant/plaintiff filed the Civil Suit No.1177/08 for determination of the site of demolished structure and to determine the area thereof to be reconstructed pursuant to the order dated 21.6.2008 passed by the Respondent-Authority.

3. The predecessor-in-interest of respondent no.3 was an unauthorised occupant of a hut/structure in the slum area measuring about 600 sq. ft. Respondent No.3 vide Deed of Assignment dated 15.7.2006 assigned her rights to the respondent no.4. The partner of the present appellant submitted a list of persons to the B.M.C.-Respondent who had to be evicted. In the said list one Shri Gupta Ram Rekha Ram Bakhash was shown occupying room no.14, behind S.H. Compound, near DTC Hotel, Saraswati Nagar, Sahar Road, Andheri (East), Mumbai. The show cause notices under Section 55 of the Maharashtra Regional Town Planning Act, 1966 were issued to all such occupants for eviction. The notice was sent to Shri Gupta Ram Rekha Ram Bakhash and not to the respondent No.3. The aforesaid structure was demolished on 11.6.2008. Immediately after demolition of the said structure, a representation dated 17.6.2008 was made by respondent no.3 through her Advocate Smt. Sangeeta Lanjewal alleging that her structure had wrongly been demolished by the respondents and it was requested to restore the same. Documents in support of her case were also filed.

“The Statutory Authority considered the said representation and allowed the same vide order dated 21.6.2008. Being aggrieved by the said order of restoration of the demolished structure, appellant filed Suit No.1177/08 in Bombay City Civil Court

along with Notice of Motion No.1342/08 which was dismissed by the Court vide order dated 8.6.2009. Being aggrieved, appellant preferred an appeal, however, the High Court vide order dated 30.7.2009 rejected the appeal and directed the respondents to restore the structure. However, it was clarified that restoration would be subject to the final result of the suit. The appellant preferred SLP (C) No.21977/09 challenging the order dated 30.7.2009 passed by the High Court. The said SLP was dismissed by this Court vide order dated 18.9.2009.”

4. The respondent no.4 in the meanwhile filed an application for impleadment as a party making it explicit that vide Deed of Assignment dated 15.7.2006, respondent no.4 had been assigned all rights in respect of the structure by respondent no.3. The said application was allowed vide order dated 12.9.2008. The present appellant being aggrieved by the order of impleadment challenged the said order dated 12.9.2008. The High Court vide order dated 10.11.2008 held that respondent no.4 was necessary party and appeal was dismissed. The said order also stood affirmed by this Court as SLP(C) No.28084/08 against the said order has been dismissed vide order dated 5.12.2008.

5. In the matter of restoration of the demolished structure, new issues have been raised by the present appellant by filing Notice of Motion in the pending suit on 22.9.2009 for determination of the above referred two issues. The Trial Court vide order dated 25.9.2009 rejected the said application and did not restrain the respondent nos.3 and 4 for carrying out reconstruction. Against the said Order, an appeal was preferred before the High Court and the High Court vide its order dated 8.10.2009 dismissed the said appeal. Hence, the present appeal.

6. Shri Harish N. Salve and Shri Mukul Rohatgi, learned Senior counsel appearing for the appellant have submitted that the aforesaid two questions are very essential for determination for the reason that unless the area is determined, identified and demarcated specifically, the said respondents cannot be permitted to raise the construction at any place. The report of the Court Commissioner as well as the B.M.C.-respondent had been to the effect that it was not possible to determine the exact location of the demolished structure. On behalf of appellant, Mr. Salve made an offer to have a constructed area at the cost of the appellant with CST Survey No.229 with a right of ingress and egress and handover the same to respondent no.3 within a period of 3 months.

“However, this would be subject to the final orders to be passed in Civil Suit No.1177/08.”

7. On the other hand, Dr. A.M. Singhvi and Shri C.A. Sundaram, learned Senior counsel appearing for Respondent Nos. 3 & 4 have opposed the prayer contending that the title of the appellant on the suit land is itself in dispute as a Public Interest Litigation i.e. W.P. No.1657 of 2006 has been filed giving backdrop in respect of the title of the land, therefore, no offer made by the appellant at this stage would be acceptable to them. A declaration had been sought in the said Writ Petition that suit land belongs to Govt. of Maharashtra and not the

appellant or its predecessors-in-interest. In the said writ petition final arguments have been heard and judgment is reserved. The High Court has also passed an interim order to maintain the status quo with liberty to the parties to move an application in case there is any change in the circumstances.

“It is further submitted that the land has been identified by the Court Commissioner as well as by the BMC and therefore, the petition is liable to be rejected.”

8. Mr. Goolam E. Vahanvati, learned Attorney General appearing for the BMC, has submitted that none of the reports submitted so far is sufficient to find out the location of demolished structure exactly and it requires a fresh exercise to determine the same.

9. We have considered the rival submissions made on behalf of the parties and perused the record.

10. Large number of documents have been filed by both the parties to substantiate their respective claims and counter-claims regarding identification/location of the demolished structure. This is the only issue involved in this case as number of offers made by the appellant are not acceptable to the respondent nos.3 and 4.

11. We have compared the maps prepared by the Court Commissioner and BMC, however, they do not match each other. The reports submitted by both of them regarding the identification are also far from satisfaction.

“The Court Commissioner, Shri M.D. Narvekar concludes his report as under:

"The suit site is a vast land without any demarcation as to survey or city survey number. I further noticed hundreds of huts on the land I visited.

In the absence of latest Map it was difficult for me to ascertain and identify the boundaries of the suit site in question.

At this stage parties and advocates on both the sides requested to execute the Commission with the assistance of a Govt. Approved Surveyor.

I, therefore, seek directions from this Hon'ble Court."

The report of the BMC is also to the same effect as its relevant part reads as under:

"The tentative location as per plan was marked where no structure was seen. Hence, the suit structure No.14 had been demolished totally and no structure could be seen at the location marked on CTS No.229.

Copy of plan 'markings' attached on CTS Sheet as annexed 'B'. Court Commissioner's plan as annexed 'C'. As per the court receiver plan and City Survey Plan, there was no suit structure seen on the plot bearing CTS No.229. The photographs were taken of the plot bearing CTS No. 229 and all the representatives agreed that there is no suit structure no.14 on the plot bearing CTS No. 229, the question of taking measurement did not arise as plot was vacant.”

12. This is not the stage for the court to decide any issue on merit as whatever interim order is passed it would be subject to the final outcome of the Suit as well as the PIL wherein the judgment has been reserved. In such a fact situation, it is desirable that BMC may undertake an exercise in respect of identification/determination to the location of the demolished structure giving due opportunity of hearing to both sides and determine the location of the demolished structure expeditiously, preferably within a period of 3 months from today. It is further clarified that on such identification, the work of restoration may be carried out by the respondents. In deciding so, the BMC may also consider the convenience of the parties in fixing the location especially with regard to ingress and egress to such site. However, it shall be subject to the outcome of the Suit.

13. The appeal stands disposed of accordingly. No costs.