

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3417 OF 2012
(Arising out of S.L.P. (Civil) No. 11866 of 2012)
(CC No. 20207/2011)

Municipal Corporation of
Greater Mumbai
Appellant(s)

Versus

Thomas Mathew & Ors.

. . .

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Delay condoned.
- 2) Leave granted.
- 3) This appeal is directed against the final judgment and order dated 10.02.2011 passed by the High Court of Judicature at Bombay in First Appeal No. 223 of 2009 whereby the High Court disposed of the appeal filed by the appellant herein with certain modifications in the judgment

and decree passed by the trial Court in Notice of Motion No. 4026 of 2003 in L.C. Suit No.539 of 2002.

4) **Brief facts:**

(a) The appellant-Corporation is a public body duly enacted and formed for the benefit of public at large and to regulate and control the unauthorized construction carried out in the city of Mumbai. The respondents are the owners of the suit premises.

(b) On 17.04.1998, a notice bearing No. KW/036/AEM/OD under Section 314 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the MMC Act”) was issued to all persons who are in occupation of the Patra structures which are constructed on foot paths and streets situated near Empire House on Veera Desai Road, Last Bus Stop, Andheri (West), Mumbai directing to remove the said Patra Sheds etc. together with their belongings within two days. On failure to comply with the said direction, the Corporation demolished the unauthorized structures raised by the respondents on 22.04.1998.

(c) Again on 19.12.2001, the Corporation issued notice under Section 354A of the MMC Act bearing No. KW/BF/354A/2154/JE-V/SEB-II directing the respondents to stop the erection of structure/execution of the work forthwith failing which the same shall be removed.

(d) Questioning the said notice, the respondents filed L.C. Suit No. 6650 of 2001 before the City Civil Court, Bombay. By order dated 21.12.2001, the Civil Judge restrained the Corporation from taking any action in pursuance of the notice issued under Section 354A of the MMC Act till filing its reply affidavit in the suit.

(e) On 08.01.2002, the Corporation issued another notice under Section 314 of MMC Act being KW/1138/AEM/OD directing the respondents to demolish the reconstructed structure on the very site which was demolished by the Corporation earlier on 22.04.1998. The respondents replied to the above notice through their advocate stating that the said notice was illegal and bad in law.

- (f) After filing of the reply affidavit by the Corporation in L.C. Suit No. 6650 of 2001, the Civil Judge by order dated 19.01.2002 discontinued the injunction order passed earlier.
- (g) Challenging the notice dated 08.01.2002 issued by the Corporation under Section 314 of MMC Act, the respondents filed Suit No. 539 of 2002.
- (h) On 25.01.2002, Suit No. 6650 of 2001 was dismissed as withdrawn.
- (i) On 16.09.2003, the Corporation demolished the unauthorized suit structure. Justifying its action taken in public interest, the Corporation filed its written statement and additional written statement in Suit No. 539 of 2002 on 30.06.2004 and 14.03.2005. By order dated 06.01.2009, the Civil Judge partly decreed the suit declaring that notice dated 08.01.2002 issued by the Corporation under Section 314 of the MMC Act was illegal and allowed the respondents to reconstruct the said structure as it was prior to the demolition at their own cost.

(j) Being aggrieved by the aforesaid order, the Corporation filed First Appeal being No. 223 of 2009 before the High Court. Vide order dated 10.02.2011, the High Court confirmed the decree passed by the trial Court with certain modifications.

(k) Being aggrieved by the order passed by the High Court, the appellant-Corporation has filed this appeal by way of special leave before this Court.

5) Heard Mr. R.P. Bhatt, learned senior counsel for the appellant and Mr. Thomas Mathew, respondent No.1, who appeared in person.

6) Though learned senior counsel for the appellant insisted that in view of the fact that the suit structure (shops) situate on the road margin which belongs to the appellant-Corporation, admittedly the said stand was not substantiated either before the trial Court or the High Court by placing any documentary evidence. In fact, the trial Judge, in his judgment, in para 21, pointed that in the year 1996, when the affidavit in reply filed in the earlier suit not to take action without following due process of law, the defendants

(Municipal Corporation) have never stated that the suit premises is falling on the road and also denied that they have ever demolished the suit premises. It was further pointed out that the question arise as to why and how they have allegedly issued the notice under Section 314 of the MMC Act and demolished the suit premises. The finding is that the defendants have not issued any notice under Section 314 of the MMC Act. Even before the High Court, the appellant-Corporation was not in a position to place any material in support of its claim. As a matter of fact, before the High Court, it was pointed out by the 1st respondent, who appeared in person about the amendment of the plaint directing the appellant to provide an alternative site or land in similar locality so that the respondents can reconstruct their structure. The appellant-Corporation and their counsel failed to take note of the amendments made in the original plaint. Even in this Court, the appellant has not placed the amended copy of the plaint and the entire claim of the respondents as projected before the Courts below. As a matter of fact, Mr. Thomas Mathew, the first respondent appearing in person on

behalf of the respondents, took us through various pages and pointed out that the appellant-Corporation has deliberately omitted certain paragraphs. On going through the same, we agree with the claim of the first respondent that the relevant portions have not been correctly filed before us. No doubt, learned senior counsel for the appellant by filing certain documents as additional evidence wants to project that the property in dispute belongs to the appellant-Corporation and the structure put up by the respondents is unauthorized, we asked a pertinent question why those materials have not been placed either before the trial Court or at least before the High Court for which Assistant Commissioner K/West Ward of Mumbai has filed an affidavit stating as follows:

“I state that Petitioner Corporation could not produce the ownership documents of set back land before City Civil Court/High Court. If the Petitioner Corporation had produced the documents of ownership of set back land, the Hon’ble Court would not have passed the orders in favour of respondents. I, therefore, say and submit that the petitioners being aggrieved by the Hon’ble High Court’s order dated 10.02.2011 for reconstruction of the suit structure has filed the present Special Leave Petition in this Hon’ble Court which is in the interest of public at large.”

We are unable to accept the lame excuse set up by the appellant-Corporation. It is not the case of the appellant that

they are unaware of the procedure and how to contest their case when they are contesting thousands of cases on behalf of the Municipal Corporation. Inasmuch as the relevant materials have not been placed by the appellant either before the trial Court or before the High Court, considering the alternative direction issued by the High Court in the impugned order which is quite reasonable, we are not inclined to go into those materials at this juncture.

7) If the appellant wants to keep the site open, in public interest, we are of the view that they are bound to comply with the direction No.2 in the impugned judgment. For compliance of the above direction of the High Court, the appellant is granted six months time from today failing which the respondents are free to execute the modified judgment of the High Court at once. We are constrained to arrive at such a conclusion only because of the inaction on the part of the officers of the appellant-Corporation before the Courts below.

8) In the light of the above discussion, the appeal fails and the same is dismissed. Inasmuch as the first respondent i.e. Mr. Thomas Mathew, who is fighting the case on behalf of all the respondents by appearing in person in this Court, we award a cost of Rs. 25,000/- to him payable by the appellant-Municipal Corporation within a period of eight weeks from today.

.....J.
(P. SATHASIVAM)

.....J.
(J. CHELAMESWAR)

NEW DELHI;
APRIL 9, 2012.

JUDGMENT