

(2014) 3 ALLMR 26 : (2013) 5 MhLj 914

Bombay High Court

Case No: Appeal from Order No. 361 of 2013 and Civil Application No. 441 of 2013

Mr. Arvind Pradhanbhai
Dama

APPELLANT

Vs

The Municipal
Corporation

RESPONDENT

Date of Decision: Aug. 30, 2013

Acts Referred:

Mumbai Municipal Corporation Act, 1888 " Section 351

Citation: (2014) 3 ALLMR 26 : (2013) 5 MhLj 914

Hon'ble Judges: Anoop V. Mohta, J

Bench: Single Bench

Advocate: J.J. Shah, for the Appellant; S.K. Sonawane, for the Respondent

Final Decision: Disposed Off

Judgement

Anoop V. Mohta, J.

Rule made returnable forthwith. Heard finally, by consent of the learned Counsel appearing for the parties. The

Appellant-original Plaintiff has challenged the show cause notice u/s 351 issued under MMC Act and in a suit prayed for injunction as the threat

was given to demolish the unauthorised structure through the Municipal Corporation's Agency. The Trial Judge has refused to grant ad-interim

relief on 21.3.2013. The Plaintiff has been in possession of the premises even prior to 1987 as a tenant and paying the rent regularly to the

landlord/owner.

2. To the show cause notice, being tenant in occupation, the Appellant filed reply dated 27.2.2013 and reference is also made to the various

documents including ration card, electricity bill and rent receipts. The averments are specifically made that no such notice was issued and/or

received by the owner/landlord of the property. It is neither the case of the Respondent-Corporation that they have served the show cause notice

to the owner separately and/or individually.

3. The question of sanction plan and/or necessary documents in support of alleged construction certainly need opportunity. The Assistant

Commissioner, in my view, just cannot pass single line order without giving an opportunity of hearing. If the documents are filed on record and

when nothing to show that the show cause notice was also issued to the owner, therefore reasoning so given by the learned Judge though not

recorded in the order passed by the Assistant Commissioner on 11.3.2013, in my view, is unacceptable. The situation is that the reasoned order

need to be passed by the Assistant Commissioner first and then the Court can note the said order and reasoning so mentioned. The learned Court

cannot give reasons for the first time which were provided and/or given by the Assistant Commissioner confirming the show cause notice in issue.

This, in my view, is relevant factor to quash and set aside impugned order dated 21.3.2013.

4. The Appellant makes statement that the property is in their possession since long time. They are in occupation and in a given case the owner

and/or the tenant or occupier could have applied for regularisation of the same also and are in occupation prior to 1987. The request was also

made by the Applicant in the reply to give personal hearing before passing any order in the matter. The submission is that there is no personal

hearing or person is required as contended by the learned Counsel for the Respondent-Corporation, is also of no assistance specifically when the

Assistant Commissioner passed unreasoned order by overlooking the submission so raised in the reply to the show cause notice. There is nothing

to show that any such notice was served upon the owner prior to the show cause notice in question. The submission is made that let an opportunity

be given to the occupant to file additional documents and additional reply before the Assistant Commissioner. This, in my view, will also curtail

further litigation as well as resolve the dispute at the earliest. Additional documents to be filed within three weeks.

5. In view of above, it is made clear that the Defendant not to take further action based upon the impugned show cause notice till the Assistant

Commissioner decide the issue again after giving an opportunity to the Plaintiff and/or landlord. The Assistant Commissioner to dispose of the

issue, as expeditiously as possible. The Trial Judge to reconsider everything again including grant of protection as granted by this Court pending the

decision of the Assistant Commissioner.

6. This order of stay to continue two weeks thereafter if the adverse order is passed by the Assistant Commissioner against the Plaintiff. The

Respondent-Corporation to file reply accordingly after the decision of the Assistant Commissioner to the Notice of Motion, which is still pending.

The Appeal from Order as well as Civil Application stand disposed of accordingly. Rule made absolute in the aforesaid terms. No costs.