IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.768 OF 2010
IN
SUIT NO. 4267 OF 2004
AND
INTERIM APPLICATION NO.153 OF 2023
IN
FIRST APPEAL NO.768 OF 2010

Municipal Corporation of Greater Mumbai A body corporate having its office at Mahapalika Marg, Fort, Mumbai 400 001.	]	..	Appellant.
v/s.			
Seema Sharad Sagwekar Indian Inhabitant of Mumbai, aged 37 years, residing and carrying on business of Ironing at a hut at Jijamata Nagar, behind Building No.38, Abhyudaya Nagar, Kalachowky, Mumbai 400 033.	]	..	Respondent.

Mr. Sharad Pakale, Sr. Advocate with Adv. Pradeep Patil i/b. Ms. Komal Punjabi, for the Appellant-MCGM.
Mr. V. K. Gupta, for the Respondent.

CORAM : FIRDOSH P. POONIWALLA,J.
RESERVED ON : 7th NOVEMBER, 2025.
PRONOUNCED ON : 25th MARCH, 2026.

Judgement:-

1 The present First Appeal is filed by the Municipal Corporation of Greater Mumbai (MCGM) challenging the Judgement dated 15th March,

2008 passed by the Bombay City Civil Court at Bombay. The operative part of the said Judgement reads as under:-

> *“ ORDER*
>
> *Suit stands decreed with cost.*
>
> *It is hereby declared that both Notice dt. 20.02.1997 issued under section 351 of M.M.C. Act and consequential order of demolition dt.19.01.2001 are illegal, invalid and inoperative.*
>
> *It is hereby declared that the Plaintiff is entitled and is therefore, allowed to re-erect the hut admeasuring 168 sq. ft in the nature of only ground floor structure, at the suit site.*
> *Decree be drawn accordingly.”*

2 The Respondent has filed an Interim Application No. 153 of 2023, seeking the following reliefs:-

> *“(a) This Hon’ble Court be pleased to direct the appellants to pay a total compensation for the loss of business and residential premise of Rs.30,000/- per month from the date of demolition i.e. 24/07/2002 of the suit premise till date and further compensation till up to date and continue paying the same till further orders;*
>
> *(b) This Hon’ble Court be pleased to direct the appellants for rehabilitation of the Respondent/ (Orig. Plaintiff) to an alternate premise;*
>
> *(c) This Hon’ble Court be pleased to provide compensation and damages as deem fit and proper by this Hon’ble Court for illegal demolition the suit premises.*
>
> *(d) for cost of this application.*

(e) for such other and further reliefs as may be necessary in the circumstances of the matter."

FACTS

3 The case of the Plaintiff/ Respondent is as under:-

(a) The Respondent, prior to her marriage, was residing with her father Budhilal Pyarelal Thakur in a hut behind Building No.38, Jijamata Nagar, Abhyudaya Nagar, G. D. Ambekar Marg, Kala Chowki, Mumbai 400 033 (hereinafter referred to as "the suit premises"). The area of the suit premises was 168 sq. ft. The Respondent's father was doing ironing business on the front side of the suit premises.

(b) The Respondent's father transferred all his right, title and interest in the suit premises in favour of the Respondent by a Writing dated 2nd February, 1981.

(c) The Deputy Collector (Encroachment), Bombay City, having his office at Old Custom House, Fort, Mumbai 400 023, had issued an Order dated 28th June, 1996 and recognized the suit premises as authorized. By the said Order, the suit premises were assessed by the Deputy Collector (Encroachment) and the Respondent was directed to pay compensation at the rate of 128/- per month from April 1985 to March, 1992, amounting to Rs.10,752/- plus Rs.1,000/- to the Deputy Collector (Encroachment).

(d) Thereafter, the Respondent received a Notice dated 20th February, 1997, under Section 351 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the MMC Act"), in respect of the suit premises.

(e) After receiving the said Notice under Section 351 of the MMC Act, the Respondent replied to the said Notice and submitted all necessary documents by her letter dated 5th March, 1997.

(f) It is the case of the Respondent that, on a scrutiny of the documents submitted by her as per her reply dated 5th March, 1997, the F/South Ward Officer satisfied himself that the suit premises were protected under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "the Slum Act") and the area in which the suit premises were located had been declared as a *"slum"*. It is further the case of the Respondent that the F/South Ward Officer of the Appellant was also satisfied that the suit premises had been duly approved by the Government of Maharashtra as per the Order dated 28th June, 1996 issued by the Deputy Collector (Encroachment) and, hence, the Notice dated 20th February, 1997 issued under Section 351 of the MMC Act, stood revoked and inoperative, and hence, the Respondent did not challenge the said Notice in the year 1997 or thereafter.

(g) After nearly 4 years, the Deputy Municipal Commissioner passed an Order dated 19th January, 2001 in respect of the suit premises whereby he called upon the Respondent to demolish the suit premises within 15 days from the receipt of the said Order, failing which, the same would be demolished departmentally at the Respondent's risk and costs.

(h) Being aggrieved by the said Order dated 19th January, 2001, the Respondent, through her Advocate, gave Notice dated 29th January, 2001, under Section 527 of the MMC Act, for filing the suit in the Bombay City Civil Court at Bombay.

(i) The Respondent, thereafter, filed L. C. Suit No.1170 of 2001 against the Appellant, challenging the said Notice dated 20th February, 1997 issued under Section 351of the MMC Act and the said Order dated 19th January, 2001.

(j) The Respondent filed Notice of Motion No. 1015 of 2001 in L.C. Suit No. 1170 of 2001 for seeking an injunction against the Appellant from demolishing the suit premises or interfering with the possession of the suit premises. In the said Notice of Motion, by an Order dated 5th March, 2001, the Bombay City Civil Court directed the Appellant to produce on record the necessary papers, as, in the Order of the Deputy Collector (Encroachment), the total area of the suit premises was shown as 168 sq. ft., whereas the Notice under Section 351 of the MMC Act described the suit premises as admeasuring 240 sq. ft.

(k) On 5th July, 2001, the Appellant filed its Written Statement in the said Suit, and by consent of the Advocates for the parties, the Notice of Motion was ordered to be disposed of with the suit. The suit was adjourned for framing of issues to 20th April, 2002. On 20th April, 2002, the suit was adjourned to 29th June, 2002 and thereafter adjourned to 19th August, 2002.

(l) On 24th July, 2002, at about 12.30 p. m., one Mr. Ghosh (Officer of the MCGM) with other employees of F/South Ward of the Appellant, came to the suit premises, and despite the Respondent's brother-in-law giving information about the pendency of L. C. Suit No.1170 of 2001, illegally and unlawfully demolished the suit premises.

(m) The Respondent immediately contacted the previous Advocate who, due to the illness of his wife, was unable to take out any proceedings. Finally, on 7th August, 2002, the Respondent's Advocate informed the Respondent to engage another Advocate as he was unable to take out any proceedings due to his wife's illness.

(n) Thereafter, the Respondent engaged another Advocate and filed Chamber Summons No. 1162 of 2002 in L. C. Suit No. 1170 of 2001 for amendment of the plaint and for mandatory order allowing reconstruction of the suit premises. The said Chamber Summons was rejected by the Bombay City Civil Court by an Order dated 3rd October, 2002.

(o) Being aggrieved by the said Order dated 3rd October, 2002, rejecting the said Chamber Summons, the Respondent filed a Writ Petition in this Court, being Writ Petition No. 7249 of 2003. The said Writ Petition was also rejected by this Court by an Order dated 20th February, 2004.

(p) Thereafter, Respondent withdrew the said L. C. Suit No.1170 of 2001 on 17th June, 2004 with liberty to file a fresh Suit on the same cause of action for appropriate reliefs of mandatory order for reconstruction of the suit premises.

(q) The Respondent, thereafter, gave Notice under Section 527 of the MMC Act through her Advocate's letter dated 17th June, 2004.

(r) Thereafter, the Respondent filed L. C. Suit No.4267 of 2004, seeking the following reliefs:-

"(a) that it may be declared by this Hon'ble Court that the said impugned Notice dated 20.2.1997 bearing No.FS/II/17/UA issued u/s 351 of the B.M.C. Act by Dy. Municipal Commissioner, F/South ward is illegal, bad in law and not maintainable and the order dated 19.1.2001 issued in pursuance thereof be declared as illegal in operative and uncalled;

(b) That it may be declared by this Hon'ble Court that the demolition of the suit premises viz a hut admeasuring about 168 sq.ft situated at Jijamata Nagar, Behind Building No.38, Abhyuday Nagar, G.D. Ambekar Marg, Kala Chowki, Mumbai 400 033 on 24.7.2002 by Shri Ghosh, the Dy. Municipal Commissioner, F/South Ward and other employees after a period of one year of the date of order viz. 19.1.2001 issued in pursuance of Notice dated 20.2.1997 bearing No.FS/II/17/UA issued u/s 351 of the M.M.C. Act. is bad in law and uncalled for;

(c) That pending the hearing and final disposal of the suit the Hon'ble Court be pleased to direct by mandatory order to the Defendants their servants and agents to reconstruct the suit premises viz a hut admeasuring about 168 sq.ft situated at Jijamata Nagar, Behind Building No.38, Abhyuday Nagar, G.D. Ambekar Marg, Kala Chowki, Mumbai 400 033 or in the alternative the Plaintiff may be allowed to reconstruct the suit premises and expenses so incurred may be directed to the Defendants to be paid to the Plaintiff.

(d) That pending the hearing and final disposal of the suit the Defendants, their servants and agents and employees be restrained from dispossessing the Plaintiff from the plot of land admeasuring about 168 sq.ft rendered vacant on

wrongful demolition, situated at Jijamata Nagar, Behind Building No.38, Abhyuday Nagar, G.D. Ambekar Marg, Kala Chowki, Mumbai 400 033."

4 In the suit, no Written Statement was filed by the Appellant.

5 The Respondent led the oral evidence of herself and her husband – Sharad Sagwekar. The Respondent and her husband were cross examined by the Advocate for the Appellant. Further, the Respondent also produced various documents in evidence.

6 By the impugned Judgement dated 15th March, 2008, the Bombay City Civil Court decreed the suit with costs. It declared that the Notice dated 20th February, 1997 issued under Section 351 of the MMC Act and the consequential Order of demolition dated 19th January, 2001 are illegal, invalid and inoperative. Further, it was declared that the Respondent was allowed to re-erect the hut admeasuring 168 sq.ft. in the nature of ground floor structure at the suit site.

POINTS FOR DETERMINATION

7 In the aforesaid facts, the following points for determination arise for this Court:-

(A) Whether the Trial Court was correct in holding that the Notice dated 20th February, 1997 issued under Section 351 of the MMC Act and the Order of demolition dated 19th January, 2001 are illegal, invalid and inoperative?

(B) Whether the Trial Court was correct in holding that the Respondent is entitled, and therefore allowed to re-erect the hut admeasuring 168 sq. ft. in the nature of only ground floor structure, at the suit site?

ARGUMENTS OF THE PARTIES

8 Mr. Suresh Pakale, the learned Senior Advocate appearing on behalf of the Appellant, submitted that the Trial Court failed to appreciate that L. C. Suit No.4267 of 2004 was barred by the principles of Res Judicata as provided under Section 11 of the Code of Civil Procedure, 1908 ("the CPC"). In this context, Mr. Pakale submitted that, since the Respondent had earlier filed a suit and withdrawn the same, the subsequent Suit, i.e. L. C. Suit No. 4267 of 2004, was barred by the principles of Res Judicata as set out in Section 11 of the CPC. In support of his submission, Mr. Pakale relied upon a Judgement of the Hon'ble Supreme Court in ***Center of Indian Trade Unions and Another v/s. Union of India and Others MANU/ MH/0014/1997.***

9 Next, Mr. Pakale submitted that, since the title of the Respondent was not clear and since the Respondent was not in possession, the Respondent ought to have file a substantive Suit for title. In support of his submission, Mr. Pakale referred to the Judgement of the Hon'ble Supreme Court in ***S. Santhana Lakshmi & Others v/s. D Rajammal 2025 LawSuit (SC) 1342.***

10 Further, Mr. Pakale submitted that, since the Appellant was

unable to file a Written Statement in the suit, this Court ought to consider remanding the matter back to the Bombay City Civil Court in order to give an opportunity to the Appellant to defend the case properly.

11 On the other hand, Mr. V. K. Gupta, the learned Counsel appearing on behalf of the Respondent, submitted that the Appellant was wrong in contending that the present suit was barred by the principles of Res Judicata. In this context, Mr. Gupta submitted that the Respondent had withdrawn the earlier suit with liberty to file L. C. Suit No. 4267 of 2004. He submitted that, in these circumstances, there was no question of L. C. Suit No. 4267 of 2004 being barred by the principles of Res Judicata. He further submitted that, since the Respondent had withdrawn the earlier suit with liberty to file a fresh suit, as recorded in paragraph 4 of the impugned Judgement, the Respondent was entitled to file the present suit.

12 As far as the Judgement in ***S. Santhana Lakshmi (supra)*** relied upon by Mr. Pakale was concerned, Mr. Gupta submitted that the same was clearly distinguishable on facts.

13 Further, Mr. Gupta took me through the evidence led by the Respondent in the suit and the cross examination. Mr. Gupta also took me through the documents and the impugned Judgement and submitted that, in light of the documentary and oral evidence of the Respondent, the Trial Court was correct in decreeing the suit.

14 Mr. Gupta also referred to I. A. No. 153 of 2023 taken out by the Respondent in this Appeal and submitted that the Appellant must be

directed to pay compensation to the Respondent for the loss of business and residential premises from the date of the demolition i.e. 24th July, 2002 till date.

ANALYSIS AND FINDINGS

15 I have heard the learned Advocates for the parties and perused the pleadings and documents on record.

16 As far as the submission of Mr. Pakale that the present suit is barred on the ground of Res Judicata is concerned, in my view, the same does not have any merit whatsoever.

17 The principles of Res Judicata are well settled and are set out in Section 11 of the CPC. Even as far as the Judgement of the Hon'ble Supreme Court in ***Center of Indian Trade Unions (supra)*** is concerned, there is no dispute regarding the proposition on Res Judicata laid down in the said Judgement. However, by virtue of the provisions of Section 11 of the CPC, for the principles of Res Judicata to apply, the prior suit is to be heard and finally decided by the Court in respect of issues which are directly and substantially in issue in the said prior suit and in the subsequent suit. In the present case, the Respondent had withdrawn the prior suit and the issues in the prior suit had not been heard or decided by the Bombay City Civil Court. Therefore, the question, of the present suit being barred by Res Judicata, does not arise at all.

18 Further, as the Respondent had withdrawn the earlier suit with liberty to file the present suit, the Respondent was entitled to do so

by virtue of Order 23 Rule 1 (3) of the CPC, which reads as under:-

> *"(3)- Where the Court is satisfied,-*
> *(a) that a suit must fail by reason of some formal defect, or*
> *(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,*
> *if may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."*

19 Mr. Pakale relied upon paragraphs 10 and 11 of the Judgement in ***S. Santhana Lakshmi (supra)***. Paragraphs 10 and 11 read as under:-

> *"10 It is also significant that though the plaintiff did not have possession, she had not claimed recovery of possession. While asserting a Will and title on its strength, there should have been a declaration of title sought, especially when the contention of the defendant was that he came into the property as a co-owner and then occupies it with absolute rights, making valuable improvements. The defendant also did not seek to get a declaration on the basis of an arrangement entered into with the father and the other brother or seek a partition on the strength of a counter claim.*
>
> *[11] In the above circumstances, we cannot but find the 'Will' is proved but the right of the testator to bequeath the property is still under a cloud. Even if the title is established, there should have been a recovery of possession sought by the plaintiff. The ill-drafted plaint and the clear admissions made in the witness box ought to have restricted the trial court and the High Court from granting an injunction against the*

> *interference of peaceful enjoyment of the property, especially when the possession was admitted to be with the defendant, in the pleadings as also the oral evidence. The injunction against alienation is perfectly in order since the defendant too has not sought for a declaration of title.*

20 In my view, the said Judgement is not applicable to the facts of the present case. The present suit challenges the Notice dated 20th February, 1997 issued under Section 351 of the MMC Act, and an Order dated 19th January, 2001 for demolition of the suit premises. Further, the suit seeks re-erection of the suit premises on the ground that they were wrongly demolished. The present suit is not a suit for title or possession of the suit premises. I*n these circumstances, the* Judgement in ***S. Santhana Lakshmi (supra)*** is not applicable.

21 As far as the submission of Mr. Pakale that the suit should be remanded back to the Bombay City Civil Court as the Appellant should be given an opportunity to file a Written Statement and defend the suit properly is concerned, again I see no merit in the same. The Appellant chose not to file a Written Statement in the said Suit. Therefore, the Appellant has to take the consequences of not filing a Written Statement in the suit and the suit cannot be remanded back, especially since the suit is of the year 2004 and the impugned Judgement is dated 15th March, 2008.

22 As far as the merits of the present case are concerned, it is undisputed that the suit premises were in Jijamata Nagar, which had been declared as a *'Slum'* area. Further, the Order dated 28th June, 1996 of the

Deputy Collector (Encroachment) declares the suit premises as a protected structure and the Respondent as a protected occupier. As rightly held by the Trial Court, in the light of the suit premises being a protected structure, the question of issuing a Notice under Section 351 of the MMC Act, or passing any order of demolition, by the Appellant, does not arise at all. The Appellant could not have demolished the suit premises as it was a protected structure.

23 Further, as rightly held by the Trial Court, in the light of the suit structure being in a *'Slum'* area, the Appellant and its officers had no right or jurisdiction to issue a Notice under Section 351 of the MMC Act or pass an Order of demolition or demolish the suit premises.

24 In these circumstances, the Trial Court has rightly declared that the Notice dated 20th February, 1997 issued under Section 351 of the MMC Act and the consequential order of demolition dated 19th January, 2001 are illegal, invalid and inoperative.

25 Further, since the suit premises were illegally demolished, the Respondent has the right to reconstruct the same, and, therefore, the Trial Court has rightly allowed the Respondent to re-erect the hut admeasuring 168 sq. ft. in the nature of ground floor structure at the suit site.

26 Accordingly, I answer Points of Determination (A) & (B) in the affirmative.

27 As far as the Interim Application No,. 153 of 2023 filed by the

Respondent seeking compensation is concerned, the same cannot be granted. The Respondent did not seek compensation in the suit and, therefore, cannot be permitted to seek compensation for the first time in the present Appeal. For these reasons, Interim Application No. 153 of 2023 filed by the Respondent is dismissed.

ORDER

28 In the light of the aforesaid discussion, and for the reasons stated above, the following Orders are passed:-

(i) The First Appeal is dismissed;

(ii) Interim Application No. 153 of 2023 filed by the Respondent is dismissed;

(iii) In the facts and circumstances of the case, there shall be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)