

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 90 OF 2015

Indrabai Ambadas Pawar

.. Petitioner

Versus

Shaikh Gulam Hussain Sk. Noormiya
and others

.. Respondents

Shri C. V. Dharurkar, Advocate for the Appellant.

Shri Girish K. Thigale (Naik), Advocate for Respondent Nos. 2/B
to 2D, 3A to 3D.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

PER COURT :

. The present appeal is filed against the order restraining the present appellant from carrying out any construction activity.

2. Mr. Dharurkar, the learned counsel submits that, residential premises wherein the present appellant is residing is in dilapidated condition. Even construction permission is obtained from Municipal Council. The present appellant has undertaken before the Court that, the construction made would be subject to the decision of the suit and no equities will be claimed. The appellant further undertakes that no construction activities would be carried out in respect of commercial premises.

Said undertaking is accepted.

3. Mr. Thigle, the learned counsel submits that, the appellant has rented out some premises. The residential premises of the appellant is in habitable condition. Even construction permission was granted for a particular period i. e. it was only upto April 2015. Even as per the said construction permission the appellant cannot construct.

4. No doubt, the appellant even if allowed to construct, the same has to be in consonance with the construction permission of the competent authority.

5. It is not disputed that the present appellant is in possession of the suit premises and is occupying and residing in the suit premises. In the light of that, there would be no impediment to allow the appellant to carry out the construction of the residential premises to make it habitable. However, same has to be in tune with the permission that would be granted by the Municipal Council. However, the appellant cannot carry out any construction of commercial premises or commercial purpose.

6. In the result I pass following order.

7. The appellant is allowed to carry out the construction of

residential portion only of the premises that too upon the valid permission of the Municipal Council. The same shall be subject to the decision of the suit. No equities would be claimed by the appellant in the said construction that is carried out and in case the plaintiff succeeds in suit, present appellant would demolish the said construction at her own costs. The appeal from order stands disposed of. No costs.

[S. V. GANGAPURWALA, J.]