

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 101 OF 2014

IN

DRAFT NOTICE OF MOTION

IN

L.C.SUIT NO. 145 OF 2014

ALONGWITH

CIVIL APPLICATION NO. 132 OF 2014

IN

APPEAL FROM ORDER NO. 101 OF 2014

IN

DRAFT NOTICE OF MOTION

IN

L.C.SUIT NO. 145 OF 2014

Haider Masoom Haider Sayyad

..... Appellant

VERSUS

The Municipal Corporation of Greater Mumbai

..... Respondents

ALONGWITH

APPEAL FROM ORDER NO. 102 OF 2014

IN

DRAFT NOTICE OF MOTION

IN

L.C.SUIT NO. 146 OF 2014

ALONGWITH

CIVIL APPLICATION NO. 133 OF 2014

IN

APPEAL FROM ORDER NO. 102 OF 2014

IN

DRAFT NOTICE OF MOTION

IN

L.C.SUIT NO. 146 OF 2014

Jubair Ahmed Abraham Shaikh

..... Appellant

VERSUS

The Municipal Corporation of Greater Mumbai Respondents

**ALONGWITH
APPEAL FROM ORDER NO. 104 OF 2014
IN
DRAFT NOTICE OF MOTION
IN
L.C.SUIT NO.144 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 135 OF 2014
IN
APPEAL FROM ORDER NO. 104 OF 2014
IN
DRAFT NOTICE OF MOTION
IN
L.C.SUIT NO.144 OF 2014**

Sayyad Mazhar Abbas **..... Appellants**
VERSUS

The Municipal Corporation of Greater Mumbai Respondents

Mr.R.A.Thorat, Senior Advocate, i/b. Mr.Bholaprasad Sukhadeo Shukla for the Appellants.

Mr.N.V.Walawalkar, Senior Advocate, a/w. Mr.A.V.Diwate for the Respondents – BMC.

CORAM : R.D. DHANUKA, J.
DATED : 30th NOVEMBER, 2015

P.C.

By these three appeals from orders, the appellants have impugned the ad-interim orders passed by the learned trial judge refusing to grant injunction against the Municipal Corporation in the notice of motions by which the appellants had applied for injunction against the Municipal Corporation from demolishing the suit premises pursuant to the notices issued under section 55 of the MRTP Act and the orders passed on such notices by the designated officers.

2. The learned trial judge has made a prima facie observations that the appellants had failed to produce any documents to show that the structures in question were in existence prior to 1st January, 1995. The Municipal Corporation also had raised the issue of jurisdiction of maintainability of the suit itself in view of the appellants challenging the notices issued under section 55 of the MRTP Act in view of bar under section 149 of the MRTP Act.

3. This court has granted ad-interim stay in favour of the appellants in early 2014 and the same is in existence. Pursuant to the ad-interim order passed by this court, the Municipal Corporation has once again verified the documents produced by the appellants and has filed affidavit for perusal of this court.

4. Mr.Thorat, learned senior counsel appearing for the appellants in the appeals from orders submits that in all the three matters the Municipal Corporation has found that atleast one or two documents produced by the appellants would indicate that the appellants were in possession of the suit structures prior to 1st January, 1995. He submits that since the ad-interim order passed by this court is in existence from quiet sometime and the respondent Municipal Corporation not having filed any affidavit in reply, the trial court will have to look into the documents produced by the appellants and after considering the affidavit in reply if any by the Municipal Corporation, the notice of motions can be disposed of expeditiously.

5. Mr.Walawalkar, learned senior counsel for the respondent supports the prima facie observations made by the learned trial judge. He however submits that the respondent has no objection if the notice of motion itself is heard expeditiously. He submits that the Corporation will file affidavit in reply within

three weeks from today and will serve a copy thereof upon the appellants' advocate simultaneously. The appellants have agreed to file rejoinder within two weeks from the date of service of the affidavit in reply.

6. It is made clear that the observations made by the learned trial judge are tentative. Though the Municipal Corporation had raised an issue of jurisdiction, the trial judge has not decided such issue. The Municipal Corporation also would be at liberty to raise any issue of jurisdiction before the learned trial judge.

7. I, therefore, pass the following order :-

(a) The ad-interim order passed by the learned trial judge is set aside. The learned trial judge is directed to dispose of the notice of motions within four months from today.

(b) The Municipal Corporation shall file affidavit in reply within three weeks from today and shall serve copy thereof upon the appellants' advocates. The appellants shall file rejoinder if any within two weeks from the date of service of the affidavit in reply and shall serve a copy thereof upon the advocate for the respondent.

(c) The ad-interim order passed by this court to continue during the pendency of the notice of motion. The learned trial judge shall decide the notice of motion on its own merits without being influenced by the observations made in the ad-interim order.

8. Appeals from orders in the aforesaid matters are disposed of in the aforesaid terms.

9. In view of the disposal of the appeals from orders, civil applications filed by the appellants do not survive and are also disposed of.

10. It is made clear that this court has not expressed any opinion about the merits of the matter. All the contentions raised by the parties are kept open.

[R.D. DHANUKA, J.]