

mnm

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST) NO. 23213 OF 2015
ALONG WITH
CIVIL APPLICATION (ST) NO. 23219 OF 2015
IN
L.C. SUIT NO. 1878 OF 2015**

Mrs. Nirmala Sanjay Herdekar

...Appellant

Vs.

Municipal Corporation of Gr. Mumbai & Ors. ...Respondents

Mr. Pratap Singh for the Appellant

Mr. A.V. Divate for the Respondent MCGM

CORAM : MRS. ROSHAN DALVI, J.

DATED : 27TH AUGUST, 2015

P.C. :

1. The appellant / plaintiff has challenged the order dated 22nd August, 2015 refusing ad-interim injunction to the appellant in respect of a Jhunka Bhakar Kendra constructed by the appellant. The appellant obtained NOC of the landlord. The NOC was for a temporary structure for providing food to needy and poor persons at nominal rate in the locality. It is upon the NOC the appellant obtained the Collector's order dated 30th September, 1998. The Collector referred the appellant to the Municipality for construction. The Municipality granted its permission on 21st December, 1998 for construction of the Jhunka Bhakar Kendra subject to

CAAST.23219/2015(5)

the conditions.

2. It must be remembered that the Kendra is essentially a temporary structure. The appellant had to renew the permission each year. The permission of 1998 has not been renewed thereafter. If the permission is not renewed the permission would stand revoked.
3. Since the permission is not renewed notice under Section 351 of the MMC Act has been given for the construction of brickmasonry wall structure which is a Jhunka Bhakar Kendra.
4. It is argued on behalf of the appellant that the permission must be first revoked and then the notice must be issued. The argument is erroneous. If the permission is in force it is required to be revoked. Hence if the permission granted for one year in 1998 is renewed from time to time the last permission can be revoked whilst that permission would be in force. If the renewal is not granted at all there is no question of revoking the permission. The permission of 21st December, 1998 would expire on 20th December, 1999. The permission cannot be revoked thereafter. Hence the notice is correctly given.
5. The appellant has replied to the notice, which is

CAAST.23219/2015(5)

considered in the order passed by the MMC on 22nd January, 2015. The reply does not show how the permission of one year could be taken to be extended when extension was not applied for.

6. Consequently the impugned order is correct. The ad-interim injunction has been refused because the permission was not got renewed every year as per the conditions of the permission. The order is correct.
7. The appeal is dismissed. The Civil Application is disposed off accordingly.

(ROSHAN DALVI, J.)