

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST.) NO. 32144 OF 2015
WITH
CIVIL APPLICATION (ST.) NO. 32146 OF 2015
IN
APPEAL FROM ORDER (ST.) NO. 32144 OF 2015

Ebrahim Sharfuddin Burondkar & Ors. Appellants.

VERSUS

Municipal Corporation of Gr.Bombay & Anr. Respondents.

Mr.Rakesh Pathak for the Appellants.
Mr.A.V.Diwate for the Respondents-BMC.

CORAM : R.D. DHANUKA, J.

DATED : 01st DECEMBER, 2015.

P.C.

. By this Appeal from Order the Appellants have impugned the order passed by the learned trial Judge refusing to grant ad-interim relief on the ground that pursuant to the notices issued by the Municipal Corporation on 18th March, 2015, the Municipal Corporation has already demolished the structures of the Appellants.

2. The learned Counsel appearing for the Appellants submits that the land on which the said structure was constructed does not belong to the Municipal Corporation. He invited my attention to the prayers in the plaint

and would submit that the Appellants has prayed for a declaration that the notices issued by the defendant are illegal and has also prayed for injunction not to dispossess the appellants from the suit premises without due process of law. The learned Counsel also invited my attention to the averments made in Paragraph (1) of the plaint in which the Appellants had described the suit premises which is not only the structures but also the land.

3. The learned Counsel appearing for the Municipal Corporation is not in a position to demonstrate whether any notices for possession of the suit land was issued by the Municipal Corporation. The apprehension of the Appellants is that the Municipal Corporation would dispossess the Appellants from the suit land without following due process of law.

4. In my view prima facie the apprehension of the Appellants appears to be justified. The Municipal Corporation can not dispossess the Appellants without following due process of law. It is however made clear that the Corporation is not precluded from following due process of law. There is no affidavit in reply filed by the Corporation before the learned trial Judge. In my view in the interest of justice would be met if the Notice of Motion filed by the Appellants is disposed of expeditiously. The Municipal Corporation is directed to file an affidavit in reply within 3 weeks from today and shall serve

a copy thereupon the appellants. Rejoinder, if any, to be filed within 2 weeks from the date of service of affidavit in reply. The learned trial Judge shall make an endeavor to dispose of the Notice of Motion within 4 months from the date of completion of the pleadings. It is made clear that no further extension would be granted to either parties for filing reply or the rejoinder.

5. The Municipal Corporation shall not remove the Appellants from possession of the suit land without following due process of law, during the pendency of the Notice of Motion. The learned trial Judge shall dispose of the Notice of Motion on its own merits. All contentions of both the parties are kept open. Appeal from Order is disposed of in aforesaid terms.

6. In view of the disposal of the Appeal from Order, the Civil Application does not survive and the same is disposed of, accordingly.

[R.D. DHANUKA, J.]