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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.33006 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.33008 OF 2015

Janhith Association	...Appellant
V/s.	
Municipal Corpn. Of Gr. Mumbai & Anr.	...Respondents

Mr.Bipin Joshi with Mr.Prayog Joshi and Mr.P.B. Gujar for the Appellant.

Mr.A.V. Diwate for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 8TH DECEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant has impugned the order dated 3rd December, 2015 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellant (original plaintiff) *inter-alia* praying for injunction restraining the Municipal Corporation from enforcing, acting upon and/or implementing the impugned notice under section 314 of the Bombay Municipal Corporation Act, 1888 (MMC Act).

2. It is the case of the appellant (original plaintiff) that there was an existing Ota which was the subject matter of the notice under section 314 of the MMC Act, the size of which was extended by the

appellant after obtaining the permission from MHADA. It is the case of the appellant that MHADA which is the concerned authority insofar as the legality of the impugned structure is concerned. It is the case of the appellant that the suit structure is not on the public street and thus section 314 of the MMC Act is not attracted to the suit structure.

3. Mr.Joshi, learned counsel for the appellant invited my attention to some of the documents annexed to the compilation including the order passed by the Assistant Engineer, "N" Ward on 28th November, 2015. He submits that the Municipal Corporation thus could not have issued the notice under section 314 of the MMC Act.

4. Learned counsel appearing for the Municipal Corporation on the other hand relied upon the observations made by the learned trial Judge and submits that the application made by the appellant for construction of the said Otlā in the year 2014 has been rejected by the Municipal Corporation. He submits that MHADA had requested the Municipal Corporation for granting permission for construction of Otlā. The Municipal Corporation has already considered the said request made by the appellant as well as MHADA and had rejected the said request. The said order is referred in the earlier decision dated 28th November, 2015 passed by the Assistant Engineer.

5. It is submitted that the Otlā has been constructed on the public road. It is submitted that the appellant has not produced any

document before the learned officer of the Municipal Corporation as well before the learned trial Judge to show that the disputed Otlā was constructed prior to 30 years. He submits that the police colony is also situated near the structure in question. The engine of Bombay Municipal Corporation was also affixed on the side of said road for removal of water saturated in that portion during rainy season and therefore, the disputed Otlā is obstructing the access to the public road.

6. A perusal of record clearly indicates that the appellant did not produce any permission before the learned trial Judge for construction of any such Otlā. In my prima-facie view the said Otlā is constructed on the road and thus provisions of section 314 of the MMC Act stood attracted. The notice issued by the Municipal Corporation is in accordance with the provisions of section 314 of the MMC Act. Admittedly the appellant did not obtain any further permission for construction of the said Otlā. It is the case of the appellant itself that prior to the appellant carrying out extension of the existing structure of Otlā, there was a small structure and in view of the permission alleged to have been granted by MHADA, the appellant had extended the portion of said Otlā.

7. A perusal of the record indicates that MHADA has not granted any permission to the appellant for construction of any such

Otla. On the contrary, MHADA itself had requested the Municipal Corporation to grant permission to construct the Otla to the appellant which is rejected by the Municipal Corporation. The said Otla constructed by the appellant on the road is thus without any permission from the Municipal Corporation and falls on the road. It is the case of the appellant itself that it is on the dead end of the road. I do not find any infirmity with the *ad-interim* order passed by the learned trial Judge. The appeal is devoid of merits and is accordingly dismissed.

8. In view of dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)