

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

**APPEAL FROM ORDER NO.191 OF 2015
along with
CIVIL APPLICATION NO.247 OF 2015
in
APPEAL FROM ORDER NO.191 OF 2015**

Ranjit Deshmukh & Ors. .. Appellants/Applicants

Vs.

Municipal Corporation of
Gr.Bombay & Anr.

.. Respondents

Mr.Vivek Shukla i/by M/s.V.Shukla & Associates for the appellants/
applicants.

Mr.P.J.Thorat a/w Mr.A.V.Diwate for the respondent no.1-BMC.

CORAM : R.D. DHANUKA, J.

DATE : 15th February 2016

P.C.

. By this appeal from order, the appellants have impugned the order dated 9th January 2015 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellants inter alia praying for an injunction against the Municipal Corporation from removing, dismantling, disintegrating, disfiguring and defacing and/or taking any coercive action in respect of the suit notice structure dated 8th December 2014 issued by the Municipal Corporation.

2. There is no dispute that the Municipal Corporation had issued a notice dated 9th December 2014 under the provisions of Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) alleging various unauthorised constructions on the part of the

appellants. In response to the said notice, the appellants had given their reply. On 23rd December 2014, the appellants submitted further explanation and submitted amended plan showing the building constructed on the site comprising of ground plus two upper floors only. The appellants requested the Municipal Corporation to approve the amended plan and to regularise the structures which were subject matter of the notice issued by the Municipal Corporation. By their communication dated 9th January 2015, the Municipal Corporation has rejected the said request for regularisation vide their letter dated 23rd December 2014.

3. The appellants have now brought to the notice of this Court the order dated 9th January 2015 passed by the Municipal Corporation. The appellants have already filed an appeal under Section 47 of the MRTP Act before the State of Maharashtra, Urban Development Department. The said appeal was lodged on 7th April 2015. Learned counsel appearing for the appellants states that the said appeal is still pending.

4. The appellants have obtained the order of status-quo on 12th January 2015 on the ground that the copy of the reasoned order was not ready on the date of the said order. The said status-quo order is continued. Since it is an admitted position that the appellants had applied for regularisation of the unauthorised structures and the Municipal Corporation having rejected such proposal, the appeal against such order would lie before the State of Maharashtra, Urban Development Department which appeal has already been filed by the appellants and pending since 7th April 2015. In my view, the appellants having filed

appeal under Section 47 of the MRTP Act cannot maintain the original action thereby impugning the notice issued under Section 53(1) of the MRTP Act. The present appeal thus does not survive and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and the same is accordingly dismissed. No order as to costs.

5. The appellate authority shall make an endeavour to dispose of the appeal filed by the appellants within six weeks from the date of communication of this order. The appellants are directed to communicate this order to the concerned department which is seized of the appeal filed by the appellants within one week from the date of this order. Status-quo order passed by this Court to continue for a period of eight weeks from today.

6. At this stage, learned counsel appearing for the appellants states that the appellants would withdraw the suit filed by the appellants i.e. L.C.Suit No.64 of 2015 which is pending before the City Civil Court, Dindoshi, Borivali Division, Goregaon within two weeks from today. Statement is accepted.

R.D. DHANUKA, J.