

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.803 OF 2016

Pushpa Manoj Gaikwad	..	Appellant
Versus		
M.C.G.M.	..	Respondents

WITH

APPEAL FROM ORDER NO.807 OF 2016

Abdul Jabbar Gani Shaikh	..	Appellant
Versus-		
M.C.G.M.	..	Respondents

Mr. B.S.Shukla for appellants
Mrs. Madhuri More for Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30th August 2016.

P.C.

1] Both these appeals raise a common question of fact and law.
Hence, these appeals are being decided by this common order.

2] Heard the learned Counsel for the appellants and respondents finally with their consent at the stage of admission itself as the issue involved in these appeals is a very short one.

3] As both the learned Counsel for the parties have referred the facts in Appeal No.803 of 2016, in this order also reference is made to the same facts.

4] The appeal is preferred against the order dated 25th July 2016 passed by the City Civil Court Dindoshi in Notice of Motion No.2027 of 2016 in L.C.Suit No.1420 of 2016. By the impugned order the trial court has rejected the ad-interim relief as sought by the appellant to restrain the respondents Municipal Corporation and its officers from taking any action in pursuance to the notice dated 16th May 2016 and order dated 14th July 2016 passed by the Assistant Engineer, K-West Ward.

5] It is submitted by the learned Counsel for the appellants that the appellant is in possession of this shop premises since the year 1995 and prior thereto one Mr. Dawood T.R. was in possession of the said premises. The only ground on which the ad-interim relief is refused is that the appellant is not having any licence under Shops and Establishments Act or under section 313 of the Mumbai Municipal Corporation Act. It is submitted that the appellant by the impugned notice dated 16th May 2016 was not called upon to produce Shop and Establishment Act licence or the licence under section 313 of MMC Act. He was called upon to produce documents like proof of existence of the

structure prior to 1st January 2000 and census certificate etc. but not the permit or licence.

6] In view thereof, as the appellant has produced documents showing her possession and prior to her, possession of one T.R.Dawood, since at least the year 1995, in my considered view the appellant's possession can be protected by granting ad-interim relief and directing the trial court to decide the notice of motion expeditiously as it is yet pending before it.

7] Hence, as a result, the appeals are allowed. The impugned order passed by the trial court rejecting ad-interim relief is set aside. The respondents are restrained from causing obstruction to the possession of the appellant in the suit premises till disposal of the notice of motion, pending before the trial court. The trial court to decide the notice of motion at the earliest and as expeditiously as possible. Parties are directed to appear before the trial court on the date on which the motion is fixed for hearing. Civil Application is disposed of accordingly.

(Judge)