

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

Amk

**APPEAL FROM ORDER NO. 802 OF 2016
WITH
CIVIL APPLICATION NO. 1005 OF 2016**

Lolaraknath Gokul Tiwari .. Appellant
Vs.
Mumbai Municipal Corporation of Gr. Mumbai .. Respondent

Mr. Sushil M. Shukla for the Appellant.
Mrs. Madhuri More for the Respondent-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 23rd AUGUST, 2016.

P. C. :

1. This appeal is preferred against the order passed by the City Civil Court at Dindoshi, Mumbai in a draft Notice of Motion filed in L. C. Suit No. 1917 of 2016, whereby an ad interim relief, as sought by the appellant-plaintiff, restraining the respondent-Municipal Corporation from demolishing the suit premises, came to be rejected.

2. As the question involved in this appeal is short one, the appeal is admitted and is heard at the stage of admission itself, with the consent of learned counsel for appellant and respondent.

3. As per the appellant, he is in peaceful possession of the suit premises in the building known as Lohana Bhavan Co-operative Housing Society Ltd., since 1970. Now, by the notice dated 29.06.2016 issued

under Section 55(1) of the MRTP Act Municipal Corporation is calling upon him to remove the said structure or otherwise to face the consequences.

4. It is submitted by the learned counsel for the appellant, that the appellant is having several documents in the form of certificate issued by the society itself stating that the appellant is residing in the suit structure as watchman since 1970. He is also having the permit issued in the name of his son Shivkumar Tiwari for driving taxi and the same is also on the address of the suit premises. It is submitted that the appellant's possession in the suit premises, which is fairly long standing, needs to be protected, at least till the disposal of Notice of Motion.

5. According to learned counsel for the appellant, the Trial Court has without assigning any reasons rejected the ad interim injunction and hence the impugned order of the Trial Court needs to be quashed and set aside.

6. *Per contra*, learned counsel for the respondent submits that as the notice is issued under Section 55(1) of the MRTP Act, the suit itself is not maintainable considering that Section 149 of the MRTP Act bars the jurisdiction of the Civil Court to entertain any suit challenging the action undertaken under the said Act. It is urged that the Trial Court has considered this aspect and rightly rejected the ad interim relief.

7. Further, it is submitted that none of the documents produced by the appellant is mentioning the property number though in the suit, the appellant has stated that it bears Room No.T-12. Moreover, it is submitted that by the impugned notice the appellant was called upon to remove the structure of plywood sheets wall 10 feet long on north side of the building which was constructed on the open space below the staircase. It is submitted that none of the documents produced by the appellant shows the structure below staircase.

8. I have perused the documents on which learned counsel for the appellant wants to place reliance and am satisfied that neither the certificate issued by the society nor the permit of taxi issued in the name of the appellant's son gives the number of suit structure as T-12. Moreover, the notice is also pertaining to the construction of plywood wall admeasuring 10 feet long on the north side. In view thereof, it becomes difficult to accept the case of the appellant that this north side plywood wall is in existence since long. Even otherwise no document is produced on record to show that the said construction is authorized or legal. Further considering the fact that the notice is under Section 55(1) of the MRTP Act, the appellant is having proper remedy to challenge the same before the statutory Tribunal. Even otherwise also, the Notice of Motion is still pending before the Trial Court. If the appellant wants, he can proceed

with the same, but at this stage no case is made out for interference with the impugned order passed by the Trial Court rejecting the ad interim relief. The appeal, therefore, holds no merits. Hence, it is dismissed.

9. In view of the dismissal of the appeal, the civil application is also dismissed as having become infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]