

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4249 OF 2016
IN
FIRST APPEAL NO.1451 OF 2016

Jitendra P. Sheth and ors

.... Applicant.

V/s.

Brihanmumbai Municipal
Corporation and another

.... Respondents

Ms. Sunita M. Poddar, for the Appellant.

Mrs. M.R. Bhoir, for the Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH SEPTEMBER, 2016.

P.C. :

1. This application is filed by the appellants seeking relief of interim injunction restraining respondent Municipal Corporation from acting or taking any action in pursuant to the Notice dated 9.10.2007 issued by the respondent under Section 314 of the Mumbai Municipal Corporation Act. It is submitted that the present appeal is preferred by the appellant challenging the judgment and order dated 3rd August, 2016, passed by City Civil Court, Mumbai, in L.C.Suit No.2672 of 2011. In the said suit, the appellant had challenged impugned notice dated 9.10.2007, issued under Section 314 of MMC Act and the final order passed in pursuance of the said notice, by the Assistant Commissioner of the

Municipal Corporation, on 15.2.2011.

2. It is submitted by learned counsel for appellants that during pendency of the said suit, order of status quo was running and it was extended by the trial Court, even after dismissal of the suit on 23.8.2016 and hence it is necessary to extend the same till decision of this appeal.

3. However, as rightly submitted by learned counsel for respondent, the documents which are produced on record and on which trial Court has relied, reveal that by the notice dated 28th March, 2005, appellants were directed for permanent re-accommodation in consultation with market department at market plot at Tagore Nagar, Vikhroli (E), Chapekar Bandhu Marg, Village Mulund, Mulund (E). In the said notice it was also informed that shifting of their structures at Ghatkopar is required for widening of Jawahar Road from its junction with Upashray Lane to Patel Chowk. However, appellants had not taken any steps in that direction though it was specifically informed that appellants should shift their shops to clear the bottle neck for the development of Jawahar Road.

4. Subsequent thereto, Notice under Section 314 of the MMC Act, was also issued to appellant on 9.10.2007, informing that as their shops were affected by widening of Railway Over Bridge and hence they should temporarily shift to a pitch along Khokhani Lane near the junction of Khokhani Lane and R.B. Mehta Marg, Ghatkopar (E). It was also

informed to them that the structures should be purely of temporary nature. It was informed that the temporary structures of appellants were now causing bottle neck for development of Jawahar Road and hence appellants were called upon to shift their shops in consultation with market department at market plot, Mulund, which would be allotted to them as permanent accommodation. Hence they shift their shop premises from Ghatkopar to Mulund, failing which action of removal of the structures will be taken at their risks.

5. Learned counsel for respondent has pointed out that the appellants were allotted a pitch along Khokhani Lane, near the junction of Khokhani Lane, R.B. Mehta Marg, Ghatkopar (E), purely on temporary basis. Clause (1) of the said allotment letter which is produced on the record at page No.204, reveals that permission was granted purely on temporary basis which was to be renewed from their office from time to time. Clause No.12 of the said allotment further reiterates that the allotment was purely on temporary basis and the Municipal Corporation has reserved its right to shift the stalls without assigning any reason and appellants shall not claim any compensation whatsoever for shifting. The undertaking to that effect was also directed to be submitted alongwith the letter.

6. In view thereof, it is quite clear that whatever accommodation was granted to the appellants, it was purely on temporary basis and as

and when the Municipal Corporation requires, the appellants had to shift therefrom to permanent alternate accommodation as granted to appellants at market place in Mulund (E).

7. In such situation the work of road widening which is necessary for the public cause cannot be held up or stalled, merely because appellants insist on remaining on the same place, which was given to them purely on temporary basis. It could be seen that the trial Court has in its judgment considered all these aspects and accordingly dismissed the appellant's suit on merits..

8. In my considered opinion, therefore, no case is made out for grant of stay. Hence application stands rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]