

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

APPEAL FROM ORDER NO. 1092 OF 2014

WITH

CIVIL APPLICATION NO. 1317 OF 2014

AND

CIVIL APPLICATION NO. 1337 OF 2015

IN

APPEAL FROM ORDER NO. 1092 OF 2014

Nirmala Janardhanan & Ors.

...Appellants

Versus

**The Municipal Corporation of Greater
Mumbai**

...Respondent

Mr. B.J. Joshi, for the Appellants.

Mr. S.S. Pakale, a/w Ms. Madhuri More, for the Respondent/MCGM.

CORAM : G.S. KULKARNI, J.

DATE : 5th December 2016

ORDER :

1. Heard Mr. Joshi, the learned Counsel for the Appellants and Mr. Pakale, the learned Counsel for the Respondent/Municipal Corporation.

2. This Appeal is directed against the order dated 25th September 2014 passed by the learned Judge, City Civil Court at Bombay on a draft Notice of Motion in Long Cause Suit No. 2652 of 2014. By the impugned order, the learned Trial Judge has rejected ad-interim relief prayed in the Notice of Motion.

3. The issue in the Suit filed on behalf of the Plaintiffs is a challenge to a notice issued by the Municipal Corporation under Section 354 of the Bombay Municipal Corporation Act dated 28th August 2014 and 16th September 2014. The case of the Corporation is that the building is categorized under C-1 Category and is dangerous and dilapidated and it is not in the interest of occupants of the building to occupy the same. The Municipal Corporation has relied upon the inspection which was undertaken prior to the issuance of the notice after the matter was referred to the Chairman of the Technical Advisory Committee. The learned Trial Judge taking note of this *prima facie* material which was on the record of the Suit refused ad-interim reliefs.

4. In this Appeal, this Court, by an order dated 24th November 2014, while adjourning the hearing of this Appeal, directed the Municipal Corporation not to take any coercive action

till the adjourned date of hearing, as also recorded the submissions as made on behalf of the Appellants that the Appellants are in occupation of the suit premises. It is stated that the said ad-interim protection has continued till date. It would be appropriate to note the contents in paragraph 2 of the said order which reads thus:-

“Learned counsel for the appellants submits that the appellants are staying there at their peril. In view of this statement, no coercive action to be taken till next date.”

5. Mr. Joshi, the learned Counsel for the Appellants submits that there are contradictory reports in respect of the condition of the building. In his submission the building is not dangerous and can be repaired. He further submits that the guidelines which are laid down by the Division Bench of this Court in Writ Petition (L) No. 1135 of 2014 were required to be followed and that the same not being followed the impugned notice issued under Section 354 of the MMC Act is rendered illegal.

6. By that as it may, as the impugned order is an ad-interim order, both the learned Counsel for the parties are agreeable that the Notice of Motion itself be heard and decided by the learned Trial

Judge. Nothing prevented the Municipal Corporation from filing a Reply before the Trial Court, though the Appeal was pending. It would be thus, appropriate that the Respondent file a Reply to the said Notice of Motion within a period of four weeks from today. Rejoinder, if any, be filed by the Appellants within two weeks thereafter.

7. Accordingly, after the pleadings are complete, between the Appellants-Plaintiffs and Defendant-Corporation, the learned Trial Judge shall take up the hearing of Notice of Motion and endeavour to decide the same as early as possible and in any event, on or before 15th March 2017.

8. As regards the continuation of the ad-interim relief granted by this Court by the order dated 24th November 2014, Mr. Joshi, the learned Counsel for the Appellants on instructions of the Appellants makes a statement that the Appellants shall continue to occupy the suit premises at their own risk and consequences. Mr. Joshi also states that in case of any untoward incident of a collapse of the building and as a consequence thereof, if there is any loss to life and property, including of any third parties, the same shall be the sole responsibility, and at the cost and consequences of the

Appellants and that the Appellants shall not hold any Government authority or the Municipal Corporation responsible for any such incident. Statements are accepted Mr. Joshi states that the undertakings of each of the Appellants to this effect shall be placed on record of this Appeal within a period of two weeks from today with copies to be furnished to the Respondent-Corporation and would also be placed on the record of the Trial Court. Statement of Mr. Joshi is accepted. It is clarified as also Mr. Joshi, the learned Counsel for the Appellants is agreeable that if an undertaking is not filed by the Appellants within a period of two weeks from today, then the protection granted by this order shall cease to operate and the Municipal Corporation shall be free to initiate appropriate action in accordance with law. It is further clarified that the protection will be available only to those Appellants who file the undertakings within the stipulated period.

9. Mr. Pakale, the learned Counsel for the Respondent Corporation states that the Plaintiffs are concerned only in respect of three shops (suit premises) which are situated on the ground floor and that rest of the building needs to be demolished. It is submitted that occupants of the other structure either on the ground or the

upper floors are not before the Court and therefore, it is required to be presumed that they have accepted the notice under Section 354 of the MMC Act. If that be the case and if the Municipal Corporation is of the opinion that it ought to proceed in accordance with law to demolish the remaining structure as it has become dangerous and dilapidated, then in this situation, there should be no embargo on the Municipal Corporation to take appropriate decision to proceed to take steps as permissible in law to demolish the balance portion. However, in doing so the Municipal Corporation shall give adequate notice to the existing occupants as also the Appellants and take all precautionary measures, so that there is no loss to life and property. Needless to observe that the Municipal Corporation shall follow the guidelines as estimated by the Division Bench in its decision in Writ Petition (L) No. 1135 of 2014 in taking any action of demolition.

10. Accordingly, subject to the above conditions, the ad-interim order dated 24th November 2014 granted by this Court and continued till date, shall continue to operate qua the Appellants, till the Notice of Motion is finally decided by the learned Trial Judge.

11. In the circumstances, the Appeal from Order does not require any further adjudication. The Appeal from Order is

accordingly, disposed of in the above terms. No costs.

12. Both the Civil Applications are accordingly disposed of.

[G.S. KULKARNI, J.]