

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

**CIVIL APPLICATION NO.1387 OF 2014
IN
APPEAL FROM ORDER NO.1149 OF 2014**

Hasmukh Ranawat

.. Applicant

Versus

**Municipal Corporation of Greater Mumbai
and another**

.. Respondents

Dr. Birendra Saraf a/w Ms. Sukhada Wagle i/by Hariani & Co., for the Applicant.

Mrs. M. R. Bhoir, for the BMC.

CORAM : R.M. SAVANT, J.

DATE : 8th JUNE 2016

PC.

1. The above Civil Application has been filed seeking stay of the impugned order dated 13.10.2014 passed in Notice of Motion No.838 in LC Suit No.839 of 2012. There is ad-interim order operating in the above Civil Application since 06.01.2015. It is required to be noted that the Learned Judge of the City Civil Court whilst dismissing the Notice of Motion has observed whilst dealing with point Nos.1 to 3 to the following effect :-

“Plaintiff has come before the Court with specific case that notice itself is illegal on the ground that necessary permission is obtained by plaintiff from corporation for

carrying on the said construction. But the case of corporation is that plaintiff has carried out construction in the open space which is beyond sanctioned plan and earlier it was demolished.

During the course of his argument learned advocate Shri. Dalal for plaintiff has pointed out as to how there is sanction from the concerned authority and has also relied upon the provisions of MRTP Act as well as MMC Act. It is important to note that the case made out by plaintiff is that he has carried out construction as per the sanctioned plan and it is not beyond that and for that plaintiff has relied upon copy of plan. But, it is important to note that grievance of corporation is that said construction is carried out in open space that too by reconstruction of earlier demolished structure. In such circumstances, I hold that though grounds are made out by plaintiff for interim injunction as discussed earlier, but considering the submissions advanced and provisions of law and documents on record, I hold that this Court will required to go into details to find out whether the construction is carried out in pursuance of the said plan or not particularly when the grievance is raised that it is carried out in the open space and for that this Court is required to go into details of everything before drawing any conclusion. Considering the action of earlier demolition and contents of the affidavit and reply shows that construction is on open space, I hold that it would not be proper to grant any relief as plaintiff has failed to make out prima facie case. I therefore answer point no.1 in negative.

In the given set of circumstances, I hold that balance of convenience does not lie in favour of plaintiff and no irreparable loss would be caused to the plaintiff if injunction as sought for is not granted. Therefore, I answer these two points accordingly.”

The Learned Judge therefore had come to a conclusion that ground for grant of interim injunction was made out and has further observed that the Court is required to go into details of everything before drawing any

conclusion, who thereafter as indicated above has dismissed the Notice of Motion.

2. It is also required to be noted that the notice under Section 354 of the MMC Act is also based on the alleged demolition which took place in the year 2009 as also inspection carried out in the year 2012. The order passed by the Assistant Municipal Commissioner also proceeds on the said basis. It seems that the Applicant/Appellant had been issued a commencement certificate on 03.02.2010 in terms of the plan which was submitted at page No.49 and which plan was also sanctioned on 03.02.2010. However, significantly the notice as well as the order passed by the Assistant Municipal Commissioner, C-Ward do not refer to the sanctioned plan. As observed by the Learned Judge of the City Civil Court, the matter would undoubtedly require further investigation at the trial stage. In my view, therefore, the ad-interim order which is in operation would have to be continued pending the above Appeal from Order. It is clarified that the pendency of the Appeal from Order would not be an impediment for the Trial Court to proceed with the suit in question. The suit in question being LC Suit No.839 of 2012 is expedited. The Civil Application is accordingly disposed of.

[R.M. SAVANT, J]