

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

**APPEAL FROM ORDER NO.83 OF 2015
along with
CIVIL APPLICATION NO.99 OF 2015
in
APPEAL FROM ORDER NO.83 OF 2015**

Ajay Chotu Phansekar .. Appellant/Applicant
Vs.
The Assistant Commissioner,
B.M.C., "K" West ward .. Respondent

Mr.Vivek Walavalkar i/by Mr.Siddharth Ingule for the appellant/
applicant.
Mr.S.R. Sonawane a/w Mr. A.V.Diwate for the respondent -BMC.

CORAM : R.D. DHANUKA, J.
DATE : 4th January 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 23rd December 2014 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellant for injunction against the Mumbai Municipal Corporation.

2. A perusal of the impugned order passed by the learned trial Judge indicates that after considering the documents produced by the appellant, the learned trial Judge had taken a prima facie view that the appellant was not able to show any documents to demonstrate that the structure occupied by the appellant/plaintiff was a separate structure or that the structure occupied by the plaintiff and his family members were different structures.

3. Learned counsel appearing for the Municipal Corporation invited my attention to the order passed by the Assistant Commissioner K/West ward during the pendency of this appeal and submits that the learned designate officer has considered all the documents produced by the appellant and has passed a detailed order. He submits that according to the said order, the appellant is not eligible for getting permanent alternate residential accommodation. A perusal of the said order indicates that the structure which is alleged to have been occupied by the appellant is situated on 44 ft. wide DP road where 900 mm dia sewer pipe line has to be laid by sewerage project department of the Municipal Corporation and this road is proposed for improvement for movement of vehicular traffic. This Court though called upon the learned counsel for the appellant to produce the documents before this Court to show that the appellant in this matter occupies a separate structure which was other than the structure occupied by Mr.Sanjay Chhotu Phansekar, the appellant is not able to produce any such documents.

4. Learned counsel, however, placed reliance on the eligibility list of affected structure holders and would submit that according to the said eligibility list, the structure of the appellant is shown as a separate structure. I have considered the said documents and I am of the view that even the said eligibility list does not indicate that the appellant was eligible for alternate accommodation. The appellant was not able to produce the relevant documents to show that the structure occupied by him was a separate structure and eligible for alternate accommodation.

5. In my view, there is no infirmity with the order passed by the learned trial Judge which was subject matter of this appeal and also

the order dated 22nd December 2015 passed by the Assistant Commissioner, K/West ward. In my view, public project cannot be stalled by the appellant. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and the same is accordingly dismissed. No order as to costs.

6. At the request of the learned counsel for the appellant, operation of this order is stayed for a period of three weeks from today. It is made clear that the appellant shall not create any third party rights in respect of the suit structure.

R.D. DHANUKA, J.