

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

**APPEAL FROM ORDER NO.149 OF 2016
along with
CIVIL APPLICATION NO.204 OF 2016
in
APPEAL FROM ORDER NO.149 OF 2016**

Premasagar Ramniranjan Upadhyay .. Appellant/Applicant
Vs.
The Municipal Corporation of
Gr. Mumbai & Ors. .. Respondent

Mr.Bhavesb Parmar a/w Mr.Vijay Yadav i/by Mr.Devmani Shukla for
the appellant/applicant.
Mr.A.V.Diwate for the respondents-MMC.

CORAM : R.D. DHANUKA, J.
DATE : 15th February 2016

P.C.

. By this appeal from order, the appellant has impugned the order passed by the learned trial Judge refusing to grant ad-interim relief in the suit for declaration that the action of the respondents (original defendants) on 15th May 2015 of partially demolishing the suit premises is bad and illegal under the law and seeking injunction against the Municipal Corporation from removing articles of the appellant alleged to have been lying in the suit premises and/or further demolition of the suit premises and other reliefs.

2. Learned counsel appearing for the appellant states that the action initiated by the respondents of partial demolition of the premises of the appellant is with malafide intention to harras the appellant who occupied the suit premises adjoining to the Zunka Bhakar Kendra.

3. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has considered the Court Commissioner's report and has prima facie come to a conclusion that the suit structure is on the footpath. The Municipal Corporation did not file affidavit-in-reply before the learned trial Judge. It is the case of the Municipal Corporation that the entire structure is demolished and not partially as canvassed by the learned counsel for the appellant.

4. In my prima facie view, since the suit structure was on the footpath, the Municipal Corporation has rightly demolished the suit structure. In so far as the grievance of the appellant that the suit flat shall not be handed over to the third party is concerned, since the purpose of the Municipal Corporation is to keep footpath without any encroachment, it would be appropriate in the interest of justice, if the said footpath is kept free without any encroachment during the pendency of the notice of motion.

5. I therefore pass the following order :-

- (i) Municipal Corporation is directed to file affidavit-in-reply within four weeks from today. Rejoinder, if any, shall be filed within two weeks from the date of service of the affidavit-in-reply;
- (ii) Municipal Corporation shall keep the footpath in question free from encroachment till disposal of the notice of motion;
- (iii) Learned trial Judge shall make an endeavour to dispose of the notice of motion within four weeks from the date of completion of the pleadings of both the parties.

6. Appeal from order is disposed of in aforesaid terms. In view of disposal of the appeal, civil application does not survive and the same is accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.