

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1684 OF 2016

Berry's Hotel Private Limited ...Petitioner
Vs.
Mumbai Municipal Corporation & Anr. ...Respondents

Mr. M.M. Vashi, Senior Advocate a/w. Ms. Apaarna Deokar
i/b. M.P. Vashi & Associates for the Petitioner
Mrs. Geeta Joglekar, Advocate for the BMC Respondent

**CORAM : SHANTANU S. KEMKAR &
M.S. KARNIK, JJ.
DATED : 23RD JUNE, 2016**

P.C. :

Parties through their Counsel. Grievance of the Petitioner is that though an order of injunction has been passed by the City Civil Court, Bombay in Suit No.2697 of 2015 vide order dated 29th February, 2016 the Respondents have issued notice dated 20th June, 2016 ordering demolition of the Petitioner's structure within 2 days on the ground that front compulsory open space between the building line to front compound wall is being illegally occupied by the Petitioner.

2. According to the Petitioner the Petitioner has not violated any conditions of sanction plan of 1958 and has also not violated conditions of the order passed by the City Civil Court, Bombay. He further submits that the undertaking as required by the City Civil Court has already been submitted by the Petitioner on 31st March, 2016. In the circumstances according to him the action of the Respondents in issuing the impugned notice requiring the Petitioner to demolish within 2 days, the aforesaid alleged encroachment is in violation of the injunction order passed by the trial Court. On the other hand learned Counsel appearing for the BMC submits that the Petitioner has not complied with the conditions of the temporary injunction order granted by the trial Court in his favour and has again made encroachment and therefore the impugned notice has been issued.

3. In reply the learned Counsel for the Petitioner submits that this statement on behalf of the BMC is incorrect. He submits that the Respondents can inspect the site and it can

be verified as to whether the Petitioner has encroached on the said portion or not.

4. Be that as it may, since the Civil Suit is pending we are inclined to dispose off this Petition by granting liberty to the Petitioner to file appropriate application challenging the impugned notice in trial Court in the pending suit where the Respondents will be at liberty to defend their action. However, looking to the time period fixed for the demolition in the impugned notice, which is only 2 days, we direct that there shall be interim protection in favour of the Petitioner till 4th July, 2016, till then no coercive steps be taken by the BMC regarding to the proposed action. Needless to say that the trial Court shall decide the application as may be filed on its own merits and the grant of protection till 4th July, 2016 shall not be construed that this Court has expressed any opinion on the merits of the matter.

5. The Petition is disposed of accordingly.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)