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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 335 OF 2015
WITH
CIVIL APPLICATION NO. 426 OF 2015

Dadar Motor Works	...Appellant
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai	...Respondent

Mr Prashant P Chawan, *with Ravindra R Chile, i/b M/s. Sawant & Associates, for the Appellant.*

Mr AY Sakhare, Senior Advocate, *with Joel Carlos, & Mrs MR Bhoir, for Respondent No. 1-MCGM.*

Mr Kamlesh Tiwari, *with Mahesh Pandey, for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 6th July 2017

PC:-

1. This is an Appeal from an ad-interim order dated 18th February 2015. The Trial Court rejected the application for ad-interim reliefs saying that a detail reply from the Municipal Corporation of Greater Mumbai (“MCGM”), then the only Defendant was necessary.

2. The dispute pertains to a shed used by the Plaintiffs at Plot No. 48-B, Scheme 31, Dadar Naigaon Estates, 200, Dr Babasaheb

Ambedkar Road, Dadar, Mumbai. According to the Plaintiffs this was a temporary structure erected prior to 1961-1962 and has been duly assessed to municipal taxes since then. The MCGM issued a notice on 8th February 2012 under Section 55(1) of the Maharashtra Regional & Town Planning Act 1960. There was also an order dated 2nd February 2015 passed by the Designated Officer. In this, the MCGM, the Planning Authority for the area, said that the Plaintiffs' shed was an unauthorized structure and directed its demolition.

3. In the time that has passed the Plaintiffs have added the landlord as party-Defendant to the Suit. Mr Sakhare for the MCGM contends that the Suit itself is not maintainable since this is an order passed under Section 55 and the bar to the Civil Court's jurisdiction under Section 149 will operate. This question will have to be left open.

4. The Plaintiff has since the time this Appeal was filed obtained further information which needs to be put on Affidavit. This was obtained by the Plaintiff in a RTI query. The Plaintiffs' assertion on facts is that the shed as it exists today is the same one that was in existence prior to 1961-1962. This is very seriously contested by the landlord. His Advocate contends that the shed in question was actually demolished. The previous landlord gave an undertaking to the MCGM. The present shed is an unauthorized reconstruction after 1967. It is, therefore, neither authorized nor tolerated and is required to be demolished. The landlord also points out that certain amounts have been paid to the MCGM and undertakings given by the landlord to the MCGM.

5. All this must be decided on merits by the Trial Court including the question of jurisdiction. It is not possible in an appeal from an ad-interim order before Affidavits were filed and all this material was placed on record to justify interference with the impugned order of 18th February 2015.

6. There is a *status quo* order of 20th February 2015 in the Appeal. This will continue pending the hearing of the Notice of Motion, and should the Notice of Motion be decided against the Plaintiffs, for a period of three weeks thereafter.

7. The Plaintiffs will file and serve a further Affidavit in support of the Notice of Motion by 11th August 2017 putting on record all relevant material. The Plaintiffs will ensure that the landlord, joined as Defendant No. 2, is served through his Advocates with the plaint, the Notice of Motion and all Affidavits. Affidavits in Reply by the MCGM and the landlord to be filed and served no later than 8th September 2017. Affidavit in Rejoinder, if any, to be filed and served on or before 25th September 2017.

8. The Trial Court is requested to dispose of the Notice of Motion at the earliest and preferably by 17th November 2017.

9. The Appeal from Order and the Civil Application are disposed of in these terms with no order as to costs.

(G. S. PATEL, J)