

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

**APPEAL FROM ORDER (ST.) NO.9807 OF 2017
WITH
CIVIL APPLICATION (ST.)NO.9808 OF 2017**

St. Domnic Education Trust,
St. Joseph's School, incorporated
under Bombay Public Trust Act ... Applicant/Appellant

Versus

The Municipal Corporation of Greater
Mumbai And Another ... Respondents

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Mr. Vishal Kanade i/b Mr. Dhirendera D. Singh for the Appellant/Applicant.
Ms. Madhuri More for the Respondent-MCGM.

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CORAM : S.C.GUPTE, J.

DATE : 12 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 By consent of learned Counsel for the parties, the Appeal from Order is admitted and forthwith taken up for final hearing. The impugned order is passed on an application of the Appellant (original Plaintiff) for ad-interim relief in its draft Notice of Motion. The subject matter of controversy is a playground, the ownership of which of the Plaintiff is not in dispute. The Plaintiff is a public charitable trust, running a school in the premises and has been using this ground as a playground for the students of its trust institution. The Executive Engineer of the Defendant-Municipal Corporation of Greater Mumbai (MCGM), by his letter dated 21 September

2000, granted no objection to the Plaintiff for construction of a watchman cabin as well as a compound around the ground. The Plaintiff has erected nets using MS Angles/Poles for enclosing the suit ground. This erection has been claimed as development of temporary nature within a meaning of Section 2(7) of the Maharashtra Regional Town Planning Act, 1966 ("Act"), by the MCGM and on that basis, a notice under Section 55 of the Act is issued by it to the trust, requiring removal of "the development of a temporary nature" unauthorisedly carried out at site and threatening to have the work dismantled summarily within 15 days from the receipt of the notice. This notice has been challenged by the Plaintiff in the present suit and by its way of Notice of Motion, interim relief has been sought restraining the MCGM from taking any action in pursuance of the impugned notice.

3 In the impugned order, the learned Judge of the City Civil Court at Bombay, has simply quoted sub-section (7) of Section 2 of the Act and proceeded to hold that he did not find substance in the submission of the Plaintiff's Advocate that the erection could not be considered a development as defined under Section 2(7) of the Act. There is hardly any discussion as to why this erection should be considered as development. The impugned order simply proceeds to observe that the impugned notice calls this a development, the description of which is not disputed by the Plaintiff anywhere in the plaint.

4 Besides, in a matter like this, the Court is expected to render its *prima facie* finding. In the premises, the impugned order is set aside. There will be an ad-interim injunction in favour of the Plaintiff till the

Notice of Motion is disposed of by the Court. The learned Judge of the City Civil Court at Bombay is directed to dispose of the Notice of Motion finally within a period of 12 weeks from today. The Defendant-MCGM is at liberty to file a reply within four weeks and rejoinder, if any, within two weeks thereafter. Appeal from Order is, accordingly, disposed of.

5 In view of the disposal of the Appeal from Order, Civil Application No.9808 of 2017 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)