

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

WRIT PETITION NO. 9133 OF 2014

Ambiya Palace CHS Ltd.

... Petitioner

V/s.

Mira Bhayandar Municipal Corporation & Ors.

... Respondents

Mr. Dilip Shukla i/b SBG & Associates for the Petitioner.

Mr. N.R. Bubna for the Respondent Nos. 1 and 2.

Mr. Ashok Saraogi for the Respondent No.3.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 07th JULY, 2017

P.C.:

. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the first and second Respondents and the learned Counsel appearing for the third Respondent.

2 By this petition under Article 226 of the Constitution of India, the Petitioners are seeking a writ of mandamus directing the first Respondent to carry out the work of demolition in respect of the compound wall in terms of the order dated 24th January 2014 passed by the first and the second Respondents, a copy of which is annexed as Exhibit 'K' to the petition.

3 The learned Counsel appearing for the first and second Respondents has tendered across the bar a copy of application for temporary injunction made by the third Respondent in Regular Civil Suit No. 224 of 2015 filed by the third

Respondent in the Court of 11th Joint Civil Judge, Senior Division at Thane. He also placed on record a copy of Judgment and order dated 14th December, 2016 by which the first and the second Respondents have been restrained from demolishing the boundary wall on the basis of the order dated 24th January 2014. However, a liberty has been granted to the first and second Respondents to initiate an appropriate proceedings after hearing the third Respondent.

4 Being aggrieved by the said order, the first Respondent has preferred Misc. Civil Appeal No. 42 of 2017 before the District Court at Thane, which is pending.

5 So long as the aforesaid order dated 14th December 2016 continues to be in force, the action of demolition on the basis of aforesaid order annexed as Exhibit-'K' to the petition, cannot be taken.

6 Hence, we dispose of the petition by passing following order:-

ORDER

i) As and when the order dated 14th December, 2016 passed by the learned 11th Joint Civil Judge, Senior Division, Thane, below application at Exhibit 5 in the Regular Civil Suit No. 224 of 2015 is vacated, the first and second Respondents shall take immediate steps for implementing the order dated 24th January 2014 (Exh.K to the petition). This order is passed without prejudice to the right of the third Respondent of challenging the order vacating the interim injunction;

ii) It will be open for the Petitioner to make an application in the pending suit for impleadment. If such application is made, the learned Trial Judge shall decide the same in accordance with law;

iii) We make it clear that we have made no adjudication about the legality and validity of the aforesaid order of the Civil Court. The said issue will be decided in the pending Appeal;

iv) Writ Petition is disposed of on the above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)