

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER st. NO.29906 OF 2017
with
CIVIL APPLICATION st.NO.29907 OF 2017

M/s.Balwant Timber Mart ... Appellant
Vs.
Municipal Corporation of Greater Mumbai ... Respondent

with
APPEAL FROM ORDER st. NO.29908 OF 2017
with
CIVIL APPLICATION st.NO.29909 OF 2017

M/s.Balwant Timber Mart ... Appellant
Vs.
Municipal Corporation of Greater Mumbai ... Respondent

with
APPEAL FROM ORDER st. NO.29911 OF 2017
with
CIVIL APPLICATION st.NO.29912 OF 2017

M/s.Balwant Timber Mart ... Appellant
Vs.
Municipal Corporation of Greater Mumbai ... Respondent

with
APPEAL FROM ORDER st. NO.29947 OF 2017
with
CIVIL APPLICATION st.NO.29949 OF 2017

M/s.Balwant Timber Mart ... Appellant
Vs.
Municipal Corporation of Greater Mumbai ... Respondent

Mr.Atul Damle, Senior Advocate with Amogh Singh, Gaurav
Srivastava i/b Dharendra P Singh for the Appellant in

AOST/29908/2017 and AOST/29911/20167

Mr.Amogh Singh i/b D.P. Singh in AOST/29908/2017 and AOST/29911/2017

Mr.Vishal Kanade with Vachan Bodke, Madhu Hiraskar i/b U.M.Jhaveri for AppelaInt in AOST/29947/2017

Mr.N.V. Walawalkar, Senior Advocate with Ms.M.R. Bhoir for Respondent Corporation in all the AOs

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: NOVEMBER 1, 2017

P.C.:

1. In all these Appeals from Order, the orders dated 18.10.2017 passed in separate draft Motions in the Civil Suit Nos.2865 of 2017, 2866 of 2017, 2864 of 2017 and 2863 of 2017, are challenged. Since the issue involved is the same in these appeals, the appeals are being disposed of by this common order.

2. The Corporation has given notices under section 314 of the Mumbai Municipal Corporation Act, thereby asking the appellants to vacate the suit structures within seven days from the service of the notices. The said notices dated 13.10.2017 are challenged by these appellants. The trial Court has refused to grant ad-interim relief and, therefore, these appeals are filed. Now, the hearing on the Motions is scheduled on 10.2.2018.

3. After hearing the parties, the learned Senior Counsel appearing for the Corporation submitted that the Assistant Municipal Corporation, H(West) Ward, has agreed to give a hearing to all these appellants in respect of the suit premises and it can be given on 10.11.2017 at 11am. The learned Senior Counsel, on instructions, further submitted that these four structures are coming in the way of road widening and as per the undertaking given by one Rizvi builders, who purchased the development rights from the owner of the said building and the suit premises, to the Corporation, the said Rizvi builders are to accommodate and give the premises in the newly constructed building to the present appellants. On that agreement and undertaking, the Corporation has given the said Builders to use FSI of the building under the suit structures. It is further submitted by the learned Senior Counsel that however, due to dispute between the original landlord and the Rizvi Builders, the appellants are not shifted or accommodated in the newly constructed building and, therefore, the work of widening of the road is stalled as the suit premises are very much in between the proposed road.

4. Per contra, the learned Senior Counsel appearing for the appellants, has submitted that these structures are originally

authorised and the Corporation has accepted this fact. The learned Counsel submitted that the appellants have no issue in shifting to the newly constructed building as per the agreement with Rizvi builders.

5. It appears that the necessary work of road widening is stalled because of the dispute between all these parties. Considering this, the Assistant Municipal Commissioner, H (West) Ward, may at the time of hearing, find out some solution and accordingly, he may call Rizvi builders. The appellants may appear before the Assistant Municipal Commissioner on 10.11.2017 at 11 am alongwith all the documents and after perusal of the documents and the after hearing the parties, the Assistant Municipal Commissioner shall pass the necessary order.

6. The submission of the learned Senior Counsel that this is to be considered as a prior notice by the appellants is accepted and thus, this hearing is to be considered as pursuant to the prior notice. In the meantime, the Corporation shall not take any coercive action in respect of the suit premises till 10 days after the receipt of the order of the Assistant Municipal Commissioner, H (West) Ward. The appellants are at liberty to take appropriate action thereafter.

7. In view of the above directions, the Appeals from Order and the Civil Applications are disposed of.

(MRIDULA BHATKAR, J.)