

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION st. NO.30977 OF 2017
with
AOST/30975/2017

Jai Hanuman Seva Mandal Charitable Trust & anr. ... Applicants

Vs.

Municipal Corporation of Greater Mumbai ... Respondent

Mr.A.M. Saraogi for the Applicants/Appellants
Mr.N.V. Walawalkar, Senior Advocate with Ms.Madhuri More for
Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: NOVEMBER 8, 2017

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. The application is moved on production for urgent relief. This application is directed against the order dated 6.11.2017 passed by the learned Adhoc Judge, City Civil Court, Dindoshi, thereby refusing ad-interim injunction in respect of the suit structure. Mr.Saraogi, the learned Counsel appearing for the appellants, the original plaintiffs, has submitted that the impugned order is not available and, therefore, they have moved this Court on the basis of Roznama as the Corporation is going to demolish the structure i.e., the temple of

Lord Hanuman, tomorrow i.e., 9.11.2017. The plaintiff-Trust, which is taking care of the temple has moved the City Civil Court.

3. After the submissions and perusal of the record, it is found that the Corporation has given the notice under section 314 of the Mumbai Municipal Corporation Act in the year 2011 to the plaintiffs that the said temple is to be removed otherwise the Corporation will demolish the structure. The suit structure according to the Corporation is on the public street / footway. Thereafter, the Corporation gave intimation by notice dated 3.8.2017 that they are going to demolish the said structure.

4. My attention is drawn to the averments made in para 5 of the plaint, which are as follows:

“5. The Plaintiffs state that in any case, the Plaintiffs are not against the regularization of the vehicular traffic within the said locality and for that purpose, if some part of the structure is required to be removed without disturbing the Idol, the Plaintiffs are mentally prepared with the same.”

5. In view of these averments, after perusal of the photographs, I am of the *prima facie* view that the suit structure is on the footway and it is disturbing the vehicular traffic. The locality appears to be very crowded and, therefore, the action taken by the Corporation,

prima facie, appears to be justified. Thus, in view of these averments, the Corporation may carry out their action of demolition of the suit structure without disturbing the idol. The Corporation shall keep 2' (two feet) space around the idol and the remaining protruding structure can be demolished.

6. With this, the Appeal from Order and the Civil Application are disposed of.

(MRIDULA BHATKAR, J.)