

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 35618 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 35620 OF 2016

Mariamman Devi & Ors. .. Appellants
vs.
Municipal Corporation of
Greater Mumbai & Ors. .. Respondents

Ms Anjali Awasthi for Appellants.
Mr. Bharat Chaudhary with Ms Madhuri More for MCGM.
Mr. A. A. Palkar – AGP for State – Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE: 06 JANUARY 2017

P.C :

1] The challenge in this appeal is to the order dated 20 December 2016, by which the City Civil Court, Mumbai, declined ad interim relief to the appellants.

2] In the notice of motion taken out by the appellants, the following reliefs were applied for :-

“A] Pending the hearing and final disposal of the Suit, this Hon'ble Court may be pleased to permit plaintiffs, as and by way of interim relief, to carry out restoration and reconstruction of Suit Temple as it was existing prior to demolition done by the Corporation on 17.11.2016 at the cost of the Plaintiffs, to be recovered from the Corporation subsequently if the Suit succeeds.

B] Pending the hearing and final disposal of the Suit, this Hon'ble Court may be pleased to grant temporary prohibitory injunction order restraining the State Government,

Corporation, their Servants and any persons claiming through them to do any activities detrimental, adverse to restoration of the Suit Temple, deities in any manner and not to obstruct the religious activities, Pooja of Plaintiff No. 1, 2 going on in the temporary shed at the suit property in any manner.

C] Ad interim, interim reliefs in terms of prayer clause [A] and [B] hereinabove may be granted in favour of the Plaintiffs and against the defendants.

D] Cost of the Suit be provided for;

E] And for such further orders as the justice and convenience may demand on time to time be passed in favour of the Plaintiffs.”

3] Admittedly, the demolition of the temple in pursuance of directions issued by the Hon'ble Supreme Court from time to time has already been taken place. The final relief applied for in the suit is basically to permit the appellants to carry out restoration and reconstruction of the suit temple as it was existing prior to its demolition on 17 November 2016. In the notice of motion also, virtually the same reliefs have been applied for by way of interim relief. Prayer clause (C) of the notice of motion seeks ad interim reliefs to the same effect.

4] Obviously, ad interim reliefs permitting restoration or reconstruction of the suit temple cannot be granted. This would otherwise amount to grant of mandatory reliefs at the ad interim stage.

5] Faced with such a situation, learned counsel for the appellants submits that though the appellants are not pressing for such ad interim reliefs in such wide terms, at least limited protection in so far as possession can always be granted. She submits that the structure which has been demolished was a protected structure. She submits that the demolition was illegal and unauthorised. She submits that the structure was entitled to the protection of the Slum Act. She expressed an apprehension that the Municipal Corporation may construct some road or some building on the place where the suit temple was located and for all these reasons, it is necessary that some ad interim relief protecting possession is granted.

6] Having considered such submissions, I am unable to accept the same. As noted earlier, the demolition of the temple, which has already taken place is in pursuance of directions issued by the Hon'ble Supreme Court, which is, in fact monitoring the situation, since it was noticed that despite directions, the various statutory authorities are not evincing keen interest in implementation of such directions. If, ultimately, the appellants are able to establish that the suit temple was indeed a legal and authorized structure and consequently, was not liable for demolition, the appellants may persuade the trial court for grant of reliefs as prayed for in the suit.

Even the notice of motion is yet to be disposed of. The appellants have prayed for interim mandatory injunction. Certainly, such kind of reliefs can never be granted at the ad interim stage. At least, considering the facts and circumstances of the present case, no case is made out for grant of any ad interim reliefs.

7] There is no case made out to interfere with the impugned order. This appeal is accordingly dismissed.

8] In view of dismissal of the appeal, civil application does not survive and is disposed of accordingly.

9] It is clarified that the observations in the impugned order or for that matter the observations in the present order are only *prima facie* and therefore, the notice of motion be disposed of on its own merits and in accordance with law. The learned trial Court to endeavour to dispose of the notice of motion within a period of two months from today. Learned counsel for the MCGM states that they will file their reply on or before 24 January 2017 which is the date scheduled for the notice of motion to be taken up for hearing.

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)