

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

**APPEAL FROM ORDER (ST.) NO. 35418 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 35422 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 35418 OF 2017**

ASCOT Co-operative Housing Society
Limited

...Appellant

Versus

The Designated Officer II Asst.
Engineer (Bldg. & Fact.) & Anr.

...Respondents

.....

Mr.P.K.Dhakepalkar, Senior Advocate i/b.Mr.Amol Mhatre for the
Appellant.

Mrs. Madhuri More for the Respondents/ Municipal Corporation.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: DECEMBER 18, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal is directed against the order dated 23rd November, 2017 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi in Notice of Motion No. 3281 of 2017 in S.C.Suit No. 2684 of 2017 thereby refusing the ad-interim temporary injunction.

3. The Municipal Corporation has issued notice dated 31st August, 2017 against unauthorized construction of compound wall on layout road and it is against the plan dated 16th July, 2013. The trial Court has held that the builder has constructed several buildings on the larger plot by obtaining sanctioned from time to time to the plan. From submissions of the learned senior counsel for the appellant and the learned counsel for the Municipal Corporation, it appears that the appellant/plaintiff has filed Suit No. 1662 of 2001 and Suit No. 160 of 2002 against the builder/developer and the Municipal Corporation respectively. Suit No. 1662 of 2001 was filed for granting conveyance in favour of the plaintiff/appellant, which was decreed by the trial Court. In Suit No. 160 of 2002, the sanctioned plan was challenged by the plaintiff, which was dismissed by the trial Court. The trial Court has directed to demarcate the portion of the society out of the entire plot and that was to be conveyed to the plaintiff. The plaintiff was directed to put appropriate fencing to the plot, which was to be conveyed, subject to concurrence and in consonance of Bombay Municipal Corporation.

4. It is informed that the compound wall is in existence since 1989. It is a matter of evidence. Parties may produce the layout plan of the area, which is mentioned in conveyance and layout plan of the sanctioned plan and accordingly, the matter can be decided at the stage of hearing of the Notice of Motion and evidence. In view of this, the Municipal Corporation not to take any coercive action in respect of the compound wall till the hearing of the Notice of Motion. The Municipal Corporation to file reply and the documents and copies are to be furnished to the appellant/plaintiff. The trial Court to hear the matter and conclude it preferably within a period of twelve weeks from today.

5. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)