

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

**APPEAL FROM ORDER (ST.) NO. 35715 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 35716 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 35715 OF 2017**

The Marvel Co-operative Housing
Society Limited & Ors.

...Appellants

Versus

The Municipal Corporation of Greater
Mumbai

...Respondent

.....

Mr.P.K.Dhakepalkar, Senior Advocate i/b. Mr.Ramanand R.
Sharma for the Appellants.

Mr.N.V.Walawalkar, Senior Advocate a/w. Mrs. Madhuri More for
the Respondent/ Municipal Corporation.

Mr.Jahangir Altaf Khan for the Intervenor.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: DECEMBER 21, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal is directed against the order dated 23.11.2017 passed by the learned Judge, City Civil Court, Borivali (Division),

Dindoshi, Mumbai in Notice of Motion No. 3334 of 2017 in S.C. Suit No. 2693 of 2017 thereby refusing the ad-interim temporary injunction. This pertaining to the legality of the notice issued under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 by the Municipal Corporation in respect of demolition of the compound wall of the appellants.

3. Learned Senior Counsel for the appellants has submitted that the compound wall is in existence since 1988. IOD was issued by the Municipal Corporation on 19.12.1987. He has pointed out that in clause no. H of the IOD, there is specific mention of the construction and condition of the compound wall. He has further submitted the Occupancy Certificate was issued by the Municipal Corporation on 31.05.1989. On a complaint of adjoining society, the Municipal Corporation has initiated action against the appellants.

4. Learned Senior Counsel for the Municipal Corporation while opposing this Appeal from Order, has argued that there is no limitation to initiate action under Section 53 (1) of the M.R.T.P.Act. The trial Court has rightly observed that no compound wall was

shown in the approved plan and the wall is constructed without taking permission of the Municipal Corporation.

5. Learned counsel for the intervenor-adjoining society has filed Caveat. He has submitted that the adjoining society is directly affected because of the compound wall and, therefore, the adjoining society is to be heard. He has further submitted that the right of way of members of the adjoining society is obstructed because of the said compound wall. The members of the adjoining society were using this road till 2009.

6. Heard submissions. Perused the impugned order.

7. Be that as it may, the learned Judge of the trial Court has observed that there is no approved plan and the compound wall is constructed without permission of the Municipal Corporation. The trial Court observations may be correct. However, the compound wall is in existence since 1988. This wall is constructed for the protection of land of the appellants. I am informed that the Notice of Motion is fixed for hearing in the month of March 2018. Under such circumstances, the trial Court to hear and decide the Notice

of Motion on or before 20.03.2018. The respondent/Municipal Corporation to file reply. Till then, the Municipal Corporation not to take any coercive action against the appellants. The Chamber Summons is also to be heard and decided by the trial Court.

8. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)