

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 28 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 29 OF 2018
IN
APPEAL FROM ORDER (ST.) NO. 28 OF 2018**

Smt.Nikhila Pawar & Ors.

...Appellants

Versus

Mumbai Municipal Corporation of Greater Mumbai ...Respondent

.....

Mr.Niranjan Mogre i/b. Mr.Siddhesh S.Borkar for the Appellants.
Mrs.Madhuri More for the Respondent/Municipal Corporation.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 4TH JANUARY, 2018.

P.C.:

1. Admit. By consent of the parties, Appeal is heard finally and decided at the stage of admission.
2. This Appeal is directed against the order dated 29th December, 2017 passed by the learned Judge, City Civil Court, Bombay Sub Division, Dindoshi, Mumbai in Draft Notice of Motion in L.C.Suit No. 3817 of 2017 thereby refusing the ad-interim injunction.

3. The respondent/ Municipal Corporation has given the notice under Section 299 of the Mumbai Municipal Corporation Act for demolition and acquisition of the lands and structures standing thereon for the public purpose i.e. road widening. The road widening is at junctional area of Wamanrao Sawant Road and Maratha Colony Road, Dahisar (East).

4. After hearing the submissions of learned counsel for both the parties and going through the record placed before the Court, it appears that the Municipal Corporation has taken possession of the vacant lands and has asked the plaintiffs/appellants to remove iron fencing.

5. The Municipal Corporation has sent notice on 22nd December, 2017. Thereafter, the Municipal Corporation has demolished the suit structures on 27th December, 2017. Hence, the appellants/plaintiffs have approached the City Civil Court, Dindoshi, Mumbai. The main contention of the appellants/plaintiffs is that the correct on site demarcation was not carried out in respect of the suit lands, which are coming within the road alignment of the said junction. The order/correspondence/noting dated 1st September, 2012 of the

Assistant Engineer (T. & C.) P & R Wards is at Exhibit –D, which shows that on site demarcation of the suit lands was pending issue. Whether such demarcation has carried out or not is required to be pointed out by the Municipal Corporation and that can be done by filing affidavit in reply to the Notice of Motion to enable the trial Court to arrive at a correct conclusion. The demarcation is required to know the area which is required to be acquired. Hence, the order of refusal of the ad-interim injunction is hereby set aside.

6. Leave to amend. Amendment is to be carried out within a period of ten days from today. Thereafter, the Municipal Corporation to file affidavit in reply within a period of two weeks. I am informed that the Notice of Motion is fixed on 22nd February, 2018. The trial Court may endeavour to hear and to dispose of the Notice of Motion on or before 28th February, 2018. The parties are directed to maintain status quo till the final hearing of the Notice of Motion.

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

(MRIDULA BHATKAR,J.)