

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

**APPEAL FROM ORDER NO.963 OF 2016
WITH
CIVIL APPLICATION NO.1207 OF 2016**

Municipal Corporation of Greater Mumbai ..Appellant

vs.

Shri Suresh Panch Rita and Anr. ...Respondents

Ms. Madhuri More for the Appellant .

Mr. Abhijeet Singh a/w Mr. Anil R. Mishra for the Respondent No.1.

CORAM : V. M. DESHPANDE, J.

DATE : 2nd JULY, 2018

P.C.:

. Heard learned counsel for the parties. By the present appeal, the Corporation is challenging the order passed by Learned Judge of City Civil Court at Dindoshi dated 30/7/2017 by which the learned Judge allowed Notice of Motion No.27 of 2013 in Suit No.2937/2012 and directed that the Corporation shall not enforce the impugned notice of demolition.

2. The Corporation has issued notice under section 354A of the M.M.C. Act. The notice under section 354A of the M.M.C. Act postulate that the construction is ongoing construction and in fact it is a notice for stoppage of work. The said notice was challenged before the Court below by Respondent/plaintiff by filing Suit No.2937/2012 wherein Notice of Motion No.27/2013 was taken. The learned Judge of the Court below in my view has recorded a finding of fact on the basis of documents and photographs on record that the construction was already over at the time of issuance of notice under section 354A of the

M.M.C. Act. Therefore instead of notice under section 354(A) of the M.M.C. Act, the Corporation was expected to issue notice under section 351 of the M.M.C. Act.

3. In fact the learned Judge of the Court below while granting relief in favour of Respondent has directed Respondent to issue notice under section 351 of the M.M.C. Act. The authorities of the Corporation instead of doing the same has preferred to approach before this Court for the reasons best known to them. In fact in my view, it is nothing but wastage of public money. The Corporation could have issued notice under section 351 of the M.M.C. Act especially when there is finding by the Court below that construction was already over. The present appeal therefore ought not to have been filed. Hence appeal is dismissed. Copy of this order be placed before the Commissioner of the Corporation to take necessary steps in the matter suitable to save public money and time.

(V. M. DESHPANDE, J)