

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2664 OF 2018**

Smt. Khatoon Bi Jaan Mohd Momin	... Petitioner
Vs.	
Bhiwandi Nizampur City Municipal Corporation	... Respondents

Mr. Atharva Dandekar for the Petitioner.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 28th FEBRUARY, 2018

PC.

. Not on Board. Taken on Board.

1 The prayer in this Petition under the Article 226 of the Constitution of India is for restraining the first respondent – Municipal Corporation from demolishing the ground plus four floors of the subject building. It is not in dispute that in respect of the very building, the petitioner filed Regular Civil Suit No.162 of 2017 in which injunction was prayed for in respect of the entire building. By an order dated 21st February, 2018, the learned Joint Civil Judge, Junior Division, Bhiwandi has partly allowed the application for temporary injunction by granting injunction confined to the building upto third floor. However, the prayer for injunction in respect of the unauthorised construction of fourth floor

and the construction on the ground floor in the parking area has been rejected. The contention of the petitioner is that after rejection of the said application, he has applied for regularisation and therefore, the Municipal Corporation should be directed to stay its hand. Civil Suit is pending. The petitioner has a remedy of challenging the order passed on the application for temporary injunction.

2 The grounds which are being urged in this Petition can be always urged in support of the Appeal in accordance with law. Therefore, filing of this Petition under Article 226 of the Constitution of India is an abuse of process of law. Hence, we reject the Petition. Remedy of Appeal is kept open.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)