

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.407 OF 2018
WITH
CIVIL APPLICATION NO.539 OF 2018

Nikhila Pawar and Anr.	 Appellants-Applicants
V/s.	
Municipal Corporation of Greater Mumbai	 Respondent

ALONG WITH
CIVIL APPLICATION NO.538 OF 2018
IN
APPEAL FROM ORDER NO.407 OF 2018

Nikhila Pawar	 Applicant
<i>In the matter between</i>	
Nikhila Pawar and Anr.	 Appellants
<i>V/s.</i>	
Municipal Corporation of Greater Mumbai	 Respondent

ALONG WITH
CIVIL APPLICATION NO.537 OF 2018
IN
APPEAL FROM ORDER NO.407 OF 2018

Municipal Corporation of Greater Mumbai	 Applicant
<i>In the matter between</i>	
Nikhila Pawar and Anr.	 Appellants
<i>V/s.</i>	
Municipal Corporation of Greater Mumbai	 Respondent

Mr. Vijay S. Kurle for the Appellants-Applicants.

Mr. J. Rais, Senior Counsel, a/w. Mrs. Madhuri More, for the Respondent-Municipal Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH AUGUST, 2018.

P.C. :

1. Heard Mr. Kurle, learned counsel for the Appellants-Applicants, and Mr. Rais, learned Senior Counsel for the Respondent-Municipal Corporation.
2. This Appeal takes an exception to the order dated 15th March 2018, passed by the City Civil Court, Mumbai, Borivali Division, Dindoshi (Branch) in Notice of Motion No.28 of 2018 filed in L.C. Suit No.3817 of 2017.
3. The said Notice of Motion was moved by the present Appellants, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the notice dated 9th November 2017, issued under Section 299 of the Mumbai Municipal Corporation Act, 1888.
4. At this stage, it may be stated that, initially, the ad-interim relief, which was sought by the Appellants, came to be refused by the Trial Court and, therefore, the Appellants had challenged the said order by preferring Appeal from Order (Stamp) No.28 of 2018 before this Court. This Court has disposed off the said Appeal vide its order dated 4th January 2018. It was specifically observed in paragraph No.5 of the said order that,

“The Municipal Corporation has also sent the notice dated 22nd December 2017. Thereafter, the Respondent-Municipal Corporation has demolished the suit structures on 27th December 2017. After the demolition, the Appellants have approached the Trial Court, raising the contention that, 'on site demarcation' was not carried out in respect of the suit lands, which are coming within the road alignment at the said relevant junction.”

5. It was further observed that,

“The order / correspondence / noting dated 1st September 2012 of the Assistant Engineer (T & C), “P & R” Wards was produced at 'Exhibit-D', which showed 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 Respondent-Municipal Corporation and that can be done by filing affidavit-in-reply to the Notice of Motion, in order 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.”

6. Accordingly, the order of refusal of ad-interim injunction was set aside and the matter was remanded to the Trial Court for hearing on the Notice of Motion.

7. Perusal of the impugned order passed by the Trial Court goes to show that, thereafter the 'joint site demarcation' of the suit lands was kept, with the consent of learned counsel for both the parties, on 22nd

February 2018 at 11:30 a.m. Both the parties were directed to remain present for the 'joint site demarcation'. This order was passed specifically in view of the submission made by learned counsel for the Appellants that, they have no objection, if the Respondent-Municipal Corporation chooses to act as per the "Road Line of 1974", subject to 'joint-site demarcation'.

8. The impugned order passed by the Trial Court further reveals that, on 22nd February 2018, no work of demarcation took place and, therefore, the parties had accepted to carry out the work of demarcation on 26th February 2018. Accordingly, the 'joint site demarcation' was carried out on 26th February 2018.

9. However, the Appellants are having some grievance about the said 'joint site demarcation'. The Trial Court has, therefore, rightly observed that, once the Appellants have accepted and given no objection, if the Respondent-Municipal Corporation chooses to act as per the "Road Line of 1974", subject to 'joint site demarcation', and if the demarcation has already taken place, then, whatever grievance the Appellants may be having about the said 'joint site demarcation', those grievances will be considered at the time of final hearing of the Suit. If there is some substance in their grievance, Appellants may get the compensation and even, at the most, the T.D.R.; but, at this stage, it would not be proper to

grant the relief of interim injunction, which the Appellants are claiming, so as to stop the work, which is going to affect the interests of the public at large.

10. It is so, especially, if one considers the observations made by this Court in the earlier order also, that the demolition of the fencing has already taken place on 27th December 2017 and, as observed by the Trial Court also, that,

“The fact of demolition of fencing is accepted by the Appellants. It means the Respondent-Municipal Corporation has already taken over possession of the suit lands.”

11. In such situation, the Trial Court has rightly held that, no case for ad-interim injunction, as claimed by the Appellants, is made out, as it will cause for more irreparable loss and greater hardship to the public at large and it would obstruct the public interests.

12. As regards the grievance of the Appellants that, in the earlier order dated 29th December 2017 passed in the Notice of Motion, it was mentioned that, the learned Advocate for the Respondent-Municipal Corporation advanced in his argument that “Road Line” is already sanctioned on 10th October 1996 and has also placed on record the 'Plan' with respect thereto, it is submitted that, now the Appellants are relying on the 'Road Line”, which is of the year 1974, and, therefore, on the basis

of such incorrect statement made by learned counsel for the Respondent-Municipal Corporation in the earlier order, the relief of interim injunction should be granted to the Appellants. However, it can be seen that, in this Appeal also, the affidavit-in-reply is filed on record by the Respondent-Municipal Corporation, which clearly states that, the Respondent-Municipal Corporation is proceeding with the sanctioned "Road Line of 1974". The notice, under Section 299 of the Mumbai Municipal Corporation Act, 1888, was, accordingly, issued on 9th November 2017.

13. In view thereof, I do not find any substance in the arguments advanced by learned counsel for the Appellants. The Appeal, therefore, holds no merits; hence, stands dismissed.

14. In view of dismissal of the Appeal, all the pending Civil Applications therein stand disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]