

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 276 OF 2018
WITH
CIVIL APPLICATION No. 358 OF 2018

Suresh Shankar Rokade ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9483 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9484 OF 2018

Suryakant Bhiwa Chawan ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9490 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9491 OF 2018

Nila Mahendra Sanghavi ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9493 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9494 OF 2018

Ambadas Anant Kapote ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9498 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9499 OF 2018

Vaishali Pramod Rajpurkar ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9503 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9504 OF 2018

Lalitkumar Harilal Vibhakar ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9505 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9507 OF 2018

Nitin Vasantraai Merchant ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9510 OF 2018
WITH
CIVIL APPLICATION (St.) No. 9511 OF 2018

Kantiben Nenshi Dedhia ... Appellant
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH
APPEAL FROM ORDER (St.) No. 9514 OF 2018
WITH

CIVIL APPLICATION (St.) No. 9515 OF 2018

Narayan Hari Kumbhar ... Appellant

Vs.

Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH

APPEAL FROM ORDER (St.) No. 9518 OF 2018

WITH

CIVIL APPLICATION (St.) No. 9520 OF 2018

Chandrika Suresh Jobanputra ... Appellant

Vs.

Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH

APPEAL FROM ORDER (St.) No. 9522 OF 2018

WITH

CIVIL APPLICATION (St.) No. 9523 OF 2018

Dinesh Chotalal Timbadia ... Appellant

Vs.

Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

WITH

APPEAL FROM ORDER (St.) No. 9525 OF 2018

WITH

CIVIL APPLICATION (St.) No. 9526 OF 2018

Mukesh S. Goda ... Appellant

Vs.

Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

Mr. Dilip Bodake, for the Appellant in AO. 276/2018 and for Applicant in CAA. 358/2018.

Mr. Piyush M. Shah, for Appellant in AOST. 9583/2018 and for Applicant in CAAST. 9484/2018, AOST. 9590/2018 and for

Applicant in CAAST. 9491/2018, AOST. 9593/2018 and for
Applicant in CAAST. 9494/2018, AOST. 9498/2018 and for
Applicant in CAAST. 9499/2018, AOST. 9503/2018 and for
Applicant in CAAST. 9504/2018, AOST. 9505/2018 and for
Applicant in CAAST. 9507/2018, AOST. 9510/2018 and for
Applicant in CAAST. 9511/2018, AOST. 9514/2018 and for
Applicant in CAAST. 9515/2018, AOST. 9515/2018 and for
Applicant in CAAST. 9520/2018, AOST. 9522/2018 and for
Applicant in CAAST. 9523/2018, AOST. 9525/2018 and for
Applicant in CAAST. 9526/2018.

Mrs. Meena Bhoir, for the Respondent – MCGM in all matters.

Mr. Yogesh C. Naidu a/w Gurdeep Singh, Ishan Srivastava, for
Respondent No. 2.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 27, 2018

ORAL JUDGEMENT ;

1. All these 12 appeals from order are heard simultaneously. Looking to the controversy involved in these appeals, I am of the view that those can be decided and disposed of finally at the admission stage.

2. **Admit.** Learned advocate Mrs. Meena Bhoir waives notice for Respondent Corporation, and learned counsel Mr.

Yogesh Naidu waives notice for Respondent No. 2. After the counsel for the respective Respondent waives service of notice for final hearing, all the matters are taken up for final hearing forthwith.

3. All these 12 appeals challenge the judgment and order dated 5th March, 2018 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai. In all these cases, though the impugned order is dated 5.3.2018, that order is passed in separate notice of motion in separate L.C. suit filed by each of the Appellant. By the impugned order, learned Judge of the Court below has rejected the respective notice of motion taken out for temporary injunction in the respective L.C. suits.

4. Appellant in Appeal from order No. 276 of 2018 filed L.C. Suit No. 3732 of 2017, and has taken out Notice of Motion No. 8 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9483 of 2018 filed L.C. Suit No. 3733 of 2017 has taken out Notice of Motion No. 9 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9522 of 2018 filed L.C.

Suit No. 3736 of 2017 and has taken out Notice of Motion No. 12 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9414 of 2018 filed L.C. Suit No. 3727 of 2017 and has taken out Notice of Motion No. 3 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9518 of 2018 filed L.C. Suit No. 3734 of 2017 and has taken out Notice of Motion No. 10 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9525 of 2018 filed L.C. Suit No. 3726 of 2017 and has taken out Notice of Motion No. 2 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9510 of 2018 filed L.C. Suit No. 3731 of 2017 and has taken out Notice of Motion No. 7 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9490 of 2018 filed L.C. Suit No. 3729 of 2017 and has taken out Notice of Motion No. 5 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9493 of 2018 filed L.C. Suit No. 3728 of 2017 and has taken out Notice of Motion No. 4 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9503 of 2018 filed L.C. Suit No. 3735 of 2017 and has taken out Notice of Motion No. 11 of 2018 in the said suit. Appellant in

Appeal from Order (St.) No. 9505 of 2018 filed L.C. Suit No. 3730 of 2017 and has taken out Notice of Motion No. 6 of 2018 in the said suit. Appellant in Appeal from Order (St.) No. 9548 of 2018 filed L.C. Suit No. 3725 of 2017 has taken out Notice of Motion No. 1 of 2018 in the said suit.

5. It is to be observed here that pleadings of above L.C. suits and notices of motion are identical except number of their tenements. Similarly, all the separate orders dated 5.3.2018 disposing of all aforesaid notices of motion in respect of L.C. suit is also identical, word by word. Therefore, I thought convenient to decide and dispose of all these appeals against the order by passing this common judgment and order.

6. All civil suits challenge the notice dated 9.11.2017 bearing Reference No. RS/DO3RS-021/351 – MMC – RS 293 No. 01 under Section 351 of Mumbai Municipal Corporation Act, 1988 and speaking order dated 10.12.2017 passed by the Designated Officer i.e. Assistant Engineer (B & F) R/South Ward, issued against each of the Appellant in respect of tenements which one is in their respective possession. The

plaintiff has sought decree for declaration that this notice is illegal, null and void, so also a decree of permanent injunction is claimed against the Respondent No. 1 / defendant No. 1, its officers, servants and person claiming through it that they should not take any action pursuant to impugned notice and the order passed by the Designated Officer.. Alongwith the plaint, different notices of motion whose numbers are indicated in the preceding paragraph were also filed for grant of temporary injunction during the pendency of the suit. These different notices of motion filed by the Appellants were rejected by order dated 5.3.2018. Hence, these appeals.

Facts :-

7. There is a Chawl, by name Chandrashali Nagar Chawl, Dahanukarwadi, Datta Mandir Road, Kandivali (West), Mumbai 67. The Appellants are having different tenements in the said Chawl and in each of the suit those tenements are the suit premises.

8. According to the plaintiffs, suit premises are in existence since 1961-62 and it is in the same condition when it

was let out to them and they have not made any alterations of any nature whatsoever. According to the plaintiffs, they are monthly tenants of the suit premises and they are paying rent regularly and further outgoing charges in respect of their suit premises.

9. Chandrashali Nagar Chawl is situated on single layout plot bearing CTS Nos. 913 and 914 admeasuring 11,001 sq. mtrs. Kandivali village and it was originally owned by late Chotalal Moreshwar Desai and late Ishwarlal Ranchhoddas Parmar and they constructed 21 rooms prior to the year 1961-62.

10. It is also stated in the plaint that Respondent No. 2 / defendant No. 2 M/s. Vandana Builders, a partnership firm acquired right, title and interest in respect of the property, at which the suit premises are situated.

11. It is also stated in the plaint that the Respondent Corporation has issued notice dated 9.11.2017 under Section 351(1) Mumbai Municipal Corporation Act, 1988 and gave show-cause notice as to why the unauthorised horizontal

extension to the existing ground floor structure with the help of Partly Brick masonry walls, partly M. S. Grill and A. C. Sheet roof should not be removed. The said show-cause notice was replied by all the Appellants through their advocate vide notice dated 9.11.2017, which was served upon the Corporation on 20th November, 2011 and pointed out that the structure in question is existing prior to 1961-62, and therefore, it is a protected structure. However, according to the plaintiff, without considering the reply in its proper perspective, Designated Officer on 10.12.2017 passed the order calling upon each of the Appellant to remove unauthorised structure, as described in the notice, within 7 days from the receipt of said order, failing which, it was intimated that it will be demolished by the Corporation without giving further intimation. This, according to the Plaintiff, was a cause of action for approaching the Court below to file the suits.

12. Respondent Corporation has filed its reply to the notice of motion, denying all adverse allegations. According to the reply, tenements in question are not existing on or before

1960-61. All the tenements are in existence since 1972, and therefore, they are not protected structures. According to the Corporation, the said construction is not having any permission whatsoever in nature from the competent authority. Therefore, it was prayed that the notice of motion be rejected.

Undisputed facts :-

13. During the course of hearing of these appeals, Respondent No. 1 Corporation Respondent No. 2 M/s. Vandana Builders has admitted following the facts:

(i) After they acquired leasehold rights by the lease-deed for redevelopment and after it became a landlord in 2016, separate suits were filed against the tenants, including the Appellants for eviction, on 8.6.2016. These suits were subsequently withdrawn by the landlord.

(ii) On 1st September, 2017 IOD was obtained by Respondent No. 2 from the Respondent No. 1. On 2.7.2017 by notice which is available at compilation (page 141 to 144), Appellants through their advocate withdrew their consent as their consent was obtained by Respondent No. 2 by

misrepresentation and fraud. They also filed a police complaint that their consent was obtained by fraud and misrepresentation. They also by their communication dated 2.7.2017 intimated the Respondent Corporation authorities that IOD obtained by the Builder is on the basis of consent from the tenants which is obtained by fraud and misrepresentation.

(iii) A suit is filed, which is pending before the competent court, by the landlord against the appellants for eviction under the Maharashtra Rent Control Act, 1999 on the grounds of bona fide need. After the lapse of one month, another suit is filed by the landlord for eviction of the Appellants on the ground that Appellants carried out unauthorised construction, additions, alterations.

(iv) That these two suits are still pending before the competent court.

(v) If the constructed structure is standing on or before 1960-61, those structures are protected structures.

Submissions :-

14. Learned counsel for the Appellants Mr. Piyush Shah

and Mr. Bodake vehemently submitted that the notices issued to the Appellants by the Respondent Corporation, are nothing but a device to evict the Appellants from the lawful possession to fulfill the lust of the Builders. They submitted that the notice itself is without jurisdiction and illegal inasmuch as the tenements are protected structure, in view of the fact that these tenements in the Chandrashali Chawl are existing prior to 1961 i.e. the datum line. In order to buttress this submission, they invited my attention to Exhibit "D", which was filed alongwith the plaint. The same document is also filed before this Court. This document is the internal report of the Corporation authorities, which was obtained under the Right to Information Act. So also, the another internal report of the Corporation. These two reports, according to them, are in respect of redevelopment of land CTS Nos. 913 and 914 of village Kandivali, Dahanukar Wadi, Kandivali (West), on which Chandrashali Chawl is standing. According to the learned counsel, these particular internal reports belies the claim of the Corporation that the disputed structures are not standing prior

to the year 1960-61, and they are not protected structures. According to the learned counsel for the Appellants, though this particular document was available before the court below, the court below failed to consider these documents, and therefore, according to them, the impugned order is required to be set aside.

15. Per contra, learned counsel Mrs. Bhoir for the Respondent Corporation, and Mr. Naidu appearing for Respondent No. 2, not only vehemently opposed the submissions of the learned counsel for Appellants, but they supported the impugned order. According to them, the structures are standing since 1972. According to them, the assessment document shows that it was assessed from 1972, and therefore, it cannot be termed as the protected structures since those structures are constructed after the datum line. They also submitted that none of the Appellant was able to point out any document to show that the structures in their respective possession, for which notice was issued, were constructed in accordance with any authorisation from the Corporation. They therefore, submitted

that the appeals be dismissed.

Consideration :-

16. Grant or refusal to grant temporary injunction is a discretionary relief from the Court. Plaintiff or the defendant, as the case may be, is required to point out that there exist prima-facie case in their favour for claiming injunction. It is also to be seen that balance of convenience also lies in their favour. If the prayer of injunction is not granted, as claimed by them, then in that event they will suffer irreparable loss, which cannot be compensated in terms of money. If these parameters are satisfied by them, the courts would readily grant order of temporary injunction, pending the main cause before it.

17. What is prima-facie case? Though this is explained and interpreted by numerous judicial decisions across the country and even by the Hon'ble Apex Court, I would like to refer one of the initial authoritative pronouncement from the Hon'ble Apex Court in *Martin Burn Ltd., Appellant Vs. R. N. Banerjee, Respondent*¹. In the said authoritative

¹ AIR 1958 Supreme Court 79.

pronouncement, the Hon'ble Apex Court in paragraph 27 has made observation, which is reproduced hereinbelow:

“27 A prima-facie case does not mean a case proved to hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substantiate its own judgment for the judgment in question.”

18. Further in 1973, the Hon'ble Madras High Court in ***K. Karunanidhi & Ors.,Petitioners Vs. R. Ranganathan Chettiar, Respondent***²ruled in paragraph 12 that:

“12. The rule that before the issue of a temporary injunction, the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed. This would amount to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound

2 AIR 1973 Madras 443 (V 60 C 137)

to fail by virtue of some apparent defects. The balance of convenience also has to be looked into.”

The aforesaid two authorities, in my view, are enough to mean and understand what is prima-facie case.

19. In my view, prima-facie case is not a case that ultimately the plaintiff must succeed in the final verdict of the suit. Thus, a prima-facie case must not be misunderstood that it is an iron cask case. What is required for the party, which claims temporary injunction that it has to make out a case for inquiry and if the party is successful to point out the case for inquiry, there should not be any difficulty for the court to record a finding that the plaintiff has a prima-facie case in its favour.

20. The purpose for grant of temporary injunction is to maintain the status-quo and protect interest of the parties, pending disposal of the suit. No doubt true that for proving the prima-facie case, the burden wholly lies on the shoulder of the party which claims it. As the granting relief of temporary injunction is a discretionary relief, the exercise of that discretion should be in a judicial manner, depending upon the

circumstances of each case. There cannot be a straight jacket formula for the guidance of the court, as regards exercise of such discretion. The Court has to apply its mind to the available pleadings and documents filed on record by the parties to the application for injunction, or may be the parties to the suit, and then should determine the question as to whether injunction should be granted or not.

21. In the present case, the appellants / plaintiffs approached the Court to claim temporary injunction to the effect that Corporation or its employees or its servants or anybody claiming through them, should not demolish the suit structure, as stated in the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 on 9.11.2017 and the impugned order passed by the Designated Officer dated 10.12.2017 on the ground that respective suit structures are standing on the Chandrashali Nagar Chawl since 1961-62, and therefore, they are protected structures. This particular claim of the plaintiff is denied by the Corporation on the ground that, in fact, those structures are existing from 1972 and therefore, they

are not protected structures.

22. It is not in dispute that prior to Respondent No. 2 M/s. Vandana Builders arriving on the scene, the Appellants were in occupation and possession of their respective tenements as tenants. Respondent No. 2 acquired the rights and interest in respect of Chandrashali Nagar Chawl, which is situated on CTS Nos. 913 and 914 of village Kandivali (West) sometime in the year 2012. Till 2012, at any point of time, there was no notice issued by the Corporation under Section 354A or 351 of the Mumbai Municipal Corporation Act, 1888.

23. As soon as Respondent No. 2 M/s. Vandana Builders acquired rights, two suits are filed against the Appellants and tenants who are before this Court. In one such suit, a decree for eviction is claimed under the relevant provisions of Maharashtra Rent Act, 1999 on the ground that whole premises are required for bona fide purposes. In another suit, eviction is claimed of the appellants and other tenants, who are not before this Court, on the ground that they had made alterations to the suit premises. Prior to lodging of these two suits, one suit was filed for

possession and the same was withdrawn by the landlord / M/s. Vandana Builders. As observed in the earlier part of the judgment, filing of these three suits is not at all disputed for and on behalf of Respondent No. 2 M/s. Vandana Builders.

24. In my view, filing of the third suit claiming eviction on the ground that Appellants have made alterations to the suit premises has its own bearing while deciding the case of the plaintiff for grant of temporary injunction. Though the Corporation is an independent authority to issue notice under Section 351 of the MMC Act for the existing unauthorised construction, claiming of a decree of eviction from the civil court by the landlord on the ground that the tenants have made alterations, cannot be brushed aside lightly, especially when admittedly, the notice under Section 351 of the MMC Act from the Corporation is issued after filing of the suit by the landlord.

25. In the affidavit, it is specifically averred that suit structures are in existence prior to 1961-62. The learned judge of the trial court has mainly rejected the applications on the ground that (i) there is no document on record to show that suit

premises are in existence on or before 1961-62; and (ii) the Corporation was able to point out that it existed after 1961-62.

26. The learned counsel for the Appellants during the course of submissions invited my attention to two documents. These two documents are in the nature of internal report from i) Dy. Ch. E. (B.P.) WS-II, dated 21.7.2017, and another (ii) of the Executive Engineer, Building Proposal (W.S.) R/S. These two documents are obtained under the Right to Information Act from the Bombay Municipal Corporation, as it can be seen from the endorsement made on these two documents. It is also not in dispute that these two documents were before the learned Judge of the trial court at the time of consideration of notices of motion for temporary injunction.

27. The internal report dated 21.7.2017 shows the subject as “Proposed Redevelopment on the land bearing CTS No. 913 & 914 of Village Kandivali at Dahanukarwadi, Kandivali (W).” The said document shows that Dy. Ch. E. (B) W.S. was required to take action as per law and submit report on the complaint submitted by one Sachine Mane to the Municipal

Corporation before Public Grievance Meeting dated 15.6.2017.

In paragraph 4, the said Corporation Authority writes as under:

“4. The proposal under reference was submitted by M/s. Vandana Builders on 13.03.2013. The proposal is for redevelopment of the certain tenanted structures existing prior to 1961-1962 covering balance FSI in layout, additional FSI & TDR. The proposal involved certain concessions, approval of CH.E. (DP) / Hon'ble MC was therefore obtained in past on under No. MCP/1697 dated 13.09.2013, copy at page C-25 to C-37.”

28. The other internal report is from the Executive Engineer(B.P.) W.S. “R” dated 5.8.2013. The said report appears to have been submitted by the said authority to the Municipal Commissioner subsequently, and the subject was “Proposed Residential Building on plot bearing C.T.S. No. 913 & 914 of village Kandivali, Ravi Mahajan Road, Off. Dahanukar Wadi, Kandivali (West), Mumbai”. The said document shows that the architect has submitted the proposal for residential building. It would be useful to reproduce hereinbelow some of the contents in the said report under the head **“Fungible Compensatory F.S.I. as per DCR 35(4)”** as under:

“The Architect has shown his inability to

submit the copy of approved plan as the existing chawl is very old. Also, there is no area mentioned on asst. abstract may please be seen at pg. C/103 to C/ 105. However, as per the Asst. Abstract there are 21 nos. of existing rooms in chawal under reference. Hence there is no authentic proof for consideration of built up area.”

29. It is to be submitted that these two reports are in respect of the redevelopment of land bearing CTS Nos. 913 and 914 of village Kandivali, Dahanukarwadi, Kandivali (West). It is stated in the plaint itself that the Chandrashali Nagar chawl where the suit tenements are standing, are situated on single layout plot bearing CTS Nos. 913 and 914, on which the suit premises are standing. Further, these reports show that certain tenanted structures are existing prior to 1961-62. What is important to note in the report is, it is mentioned that the architect has shown his inability to submit copy of approved plan, as the existing chawl is very old.

30. Thus, the aforesaid two documents filed on record, copies of which are obtained under the Right to Information Act, from the Corporation authority which show that these two internal reports which are prepared by the concerned authorities

show that chawl is very old and the tenanted premises are in existence prior to 1961-62. Since these two documents are coming from the custody of the Corporation, and since its authenticity is not at all denied by the Corporation, in my view, there cannot be any impediment and / or obstacle to record the finding for deciding the applications for temporary injunction that tenanted premises are in existence since 1961-62 and / or plaintiffs are successful in canvassing their case that the tenanted premises are in existence prior to 1961-62.

31. The Corporation has filed its reply before this Court, and also filed the documents which are also considered by the court below. The learned counsel for Respondent No. 2 builder and the learned counsel for the Corporation has invited my attention to page 21 of the reply, filed on behalf of the Corporation before this Court. Perusal of the said page shows that a demand for tax is given by the Corporation in the year 2016-2017. In one column of the said demand bill recites “प्रथम कर निर्धारण दिनांक” and against that the date is 1.4.1972. This document is primarily pressed into service by the learned

counsel for the Respondents to point out that chawl is in existence since 1972. At the first blush, one would tend to accept their submission. However, on closure scrutiny of the said document, I am afraid that their submission can be accepted because the said demand is addressed to the Secretary Mohan Nagar and not any of the Appellants, who are residing in Chandrashali Nagar chawl.

32. Further, though the internal reports of the Corporation authorities were available before the learned trial court, a perusal of the impugned order shows that those two documents are not at all considered by the learned Judge of the trial court, while considering the notice of motion, as there is no reference of these two documents in the impugned order.

33. It is the duty of the court to consider the documents filed on record by the party and after considering the same, the Court either accept or reject the document by supplementing the reasons. However, when available documents are not at all considered by the Court and when there is no reference of these documents in the order which is challenged before the appellate

court, then in that event, it is always open for the Appellant to criticise the impugned order that it suffers from non-application of mind and the approach of the court below is perverse one. In the present case, the impugned order is one of such orders. The Court below ought to have seen that these documents available on record, which goes to the root of the matter. If the structures are standing from 1961-62, then they are protected structures and the Corporation cannot issue notices to demolish them on the ground that there is no sanction for the construction. In the present case, the plaintiffs pointed out by placing on record two very important documents of the Corporation to show that the structures are standing prior to 1961-62. Therefore, non consideration of these vital documents requires me to record a finding that approach of the court below is perverse and cannot sustain in the eye of law because of non-consideration of vital documents which goes to the root of the matter.

34. The aforesaid evaluation of the pleadings and documents on records leads me to record a find that each of the plaintiff has successfully demonstrated existence of prima-facie

case in their favour.

35. Once the court records finding that the Appellants / plaintiffs have prima-facie case in their favour, in my view, the court is also required to record finding that the balance of convenience is also in their favour and if the injunction is not granted, there will be irreparable injury to them. All the appellants / plaintiffs are residing in the premises for which the notice of demolition is issued. If the said notice is allowed to given effect, then their structures will be demolished to the extent as it is mentioned in the notice, thereby causing serious prejudice to each of the plaintiff. That would make them to suffer, which cannot be compensated in terms of money.

36. Evaluation of the Appellants' case and the Respondents' version, insofar as notice of motion for injunction, therefore, leads me to pass the following order.

ORDER

- (i) All appeals are allowed. However, there shall be no order as to costs.
- (ii) The impugned order dated 5.3.2018 passed by the

learned Judge, City Civil Court & Additional Sessions Judge, Dindoshi Mumbai in (i) Notice of Motion No. 1 of 2018 filed in L. C. Suit No. 3725 of 2017; (ii) Notice of Motion No. 2 of 2018 filed in L. C. Suit No. 3726 of 2017; (iii) Notice of Motion No. 3 of 2018 filed in L. C. Suit No. 3727 of 2017; (iv) Notice of Motion No. 4 of 2018 filed in L. C. Suit No. 3728 of 2017; (v) Notice of Motion No. 5 of 2018 filed in L. C. Suit No. 3729 of 2017; (vi) Notice of Motion No. 6 of 2018 filed in L. C. Suit No. 3720 of 2017; (vii) Notice of Motion No. 7 of 2018 filed in L. C. Suit No. 3731 of 2017; (viii) Notice of Motion No. 8 of 2018 filed in L. C. Suit No. 3732 of 2017; (ix) Notice of Motion No. 9 of 2018 filed in L. C. Suit No. 3733 of 2017; (x) Notice of Motion No. 10 of 2018 filed in L. C. Suit No. 3734 of 2017; (xi) Notice of Motion No. 11 of 2018 filed in L. C. Suit No. 3735 of 2017; (xii) Notice of Motion No. 12 of 2018 filed in L. C. Suit No. 3736 of 2017, are hereby set aside and the said

notices of motion are hereby allowed. The Respondents and anybody claiming through them are injuncted and restrained from taking any steps, pursuant to the notices dated 9.11.2017, as also the Speaking orders dated 10.12.2017, issued by the Designated Officer of the Respondent Corporation, which are impugned in the respective suits. The injunction shall remain in operation till each suit is decided finally on its own merits.

- (iii) It is expected that the learned trial court should decide the suits as expeditiously as possible.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath