

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5544 OF 2015

Thane Municipal Corporation	... Petitioner
v/s	
Shri Bharat Chunilal Gohil and others	... Respondents

Mr Mandar Limaye for Petitioner.
Mr Sandeep Sharma with Ms Vaishali Ingle for Respondents.

CORAM : B.P. COLABAWALLA, J.

DATE : 07th DECEMBER, 2018

P.C.:

1. This Writ Petition challenges the order dated 17th January 2014 passed below Exh.5 by the Trial Court in Regular Civil Suit No.944 of 2013 as well as the order dated 2nd March 2015 passed in Miscellaneous Civil appeal No.31 of 2014.

2. By the order dated 17th January 2014 passed below Exh.5, the Trial Court granted a temporary injunction against the Petitioner Corporation from

demolishing the suit property or dispossessing the Plaintiff from the suit property for the purpose of widening a 6' wide road adjacent to the suit property until the final decision in the Suit.

3. Being aggrieved by the order of the Trial Court, the Petitioner Corporation approached the Appellate Court viz. the District Judge, Thane. The appellate Court also by its order dated 2nd March 2015 dismissed the Appeal. It is aggrieved by these two orders that the present Petition has been filed.

4. I have heard the learned counsel for the parties at some length. This Petition was filed in the year 2015. I have been informed that the trial is now progressing and is at the stage of cross-examination of the Plaintiff's witness. Considering that the trial itself is now progressing and is likely to come to an end in a short period of time, I am not inclined to entertain this Writ Petition. In any event, the Petitioner being a Corporation cannot evict the Plaintiff (the Respondent herein) without following the due process of law. This being the case, I do not think that this Writ Petition ought to be entertained.

5. The learned counsel appearing on behalf of the Petitioner however, brought to my attention that the property on which the suit structures are situated belong to MHADA. This position is refuted by the Respondents herein.

Be that as it may, it is clarified that this issue is expressly kept open for the Petitioner Corporation to agitate before the Trial Court and any observations in the orders impugned herein on this issue would be treated only as prima facie observations and would not bind the Trial Court while deciding the Suit finally. With this clarification, Writ Petition is dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)