

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

**SECOND APPEAL NO. 205 OF 2013
WITH
CIVIL APPLICATION NO. 613 OF 2013**

M/s.Ninad Developers ... Appellant
V/s.
Mira Bhayandar Municipal Corporation ... Respondent

- Mr.Sandesh D. Patil a/w. Mr.Chintan Y. Shah for the Appellant.
- Mr.Mayuresh S. Lagu for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Second Appeal is preferred against the judgment and decree dated 29/01/2013 passed by the District Judge-6, Thane, in Civil Appeal No.173 of 2011 thereby confirming the judgment and decree passed by the 6th Jt. Civil Judge, Junior Division, Thane, on 19/10/2011 in Regular Civil Suit No.228 of 2010.

3] The said suit was filed by the present Appellant simpliciter for injunction contending that the Respondent-Corporation be

restrained from taking any action in pursuance of the notice dated 10/07/2009 issued under Section 267(a) of the B.P.M.C. Act. It was submitted that the said notice is for the recovery of the tax amount. However, under the garb of the said notice, the Appellant has apprehension that the Respondent may take the action of demolition of the suit structure.

4] However, both the trial Court and the Appellate Court have recorded concurrent finding of fact that there is no reasonable basis for the apprehension on the part of the Appellant that the Respondent may take the action of demolition of the suit structure. It may be true that the Appellate Court has held that the notice is under Section 267(a) of the B.P.M.C. Act and therefore, there is no question of the Respondent taking the action of demolition in pursuance of the said notice.

5] In view thereof, when admittedly the notice does not at all say anything about the demolition of the suit structure, then where does the question arises of the Appellant having any apprehension to that effect on the basis of the said notice. If there is no reason for any such apprehension, then the relief of injunction cannot be granted; especially when such relief can be misused for the purpose of protecting the illegal construction, if any, under the garb of this order.

6] Therefore, in the concurrent finding of record as recorded by the trial Court and the Appellate Court, this Court cannot interfere in the Second Appeal; especially when no substantial question of law is involved therein.

7] The Second Appeal therefore stands dismissed.

8] In view of dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]