

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

**APPEAL FROM ORDER (ST) No. 13602 OF 2018
WITH
CIVIL APPLICATION (ST) No. 13604 OF 2018
IN
APPEAL FROM ORDER (ST) No. 13602 OF 2018**

Manisha Shamrao Hindelekar	..Appellant/Applicant
Vs.	
Municipal Corporation of Greater Mumbai	..Respondent

Mr. Shardul Singh a/w. Ketki Gadkari for Appellant/Applicant
Mrs. M.R. Bhoir for Respondent No.1-State
Mr. Ashutosh Kaushik i/b. Kaushik & Co. for Respondent Nos. 2 to 4

CORAM : SMT. BHARATI H. DANGRE , J.
DATE: MAY 10, 2018
VACATION COURT.

P.C.

1. The Appellant is challenging the order dated 21st April, 2018 passed by the City Civil Court, Dindoshi, Mumbai in a notice of motion taken out by the Plaintiff to temporary restrain the Defendants from demolishing or pulling down the suit property situated at House No. 299/A, at Patkar Wadi, Machubhai Road, Malad (East), Mumbai on the land CTS No. 171/6 of Village Malad (E), Taluka Borivali. It is pertinent to note that when the suit was filed in the year 2016, challenging the Notice issued by the Mumbai Municipal Corporation under Section 351 of the Mumbai

Municipal Corporation Act, there was no injunction granted in the said suit. However, it is the case of the Plaintiff that certain subsequent developments intervened, constraining her to move notice of motion inviting the attention of this Court to the fact that the alleged structures mentioned in the notice dated 7.3.2014 have already been removed and, as a result, there nothing remained for demolition.

It is the specific case of the Plaintiff that the Court by order dated 8.3.2018 had already directed the City Survey Officer to carry out survey of the suit property in presence of the parties by giving prior intimation and report was directed to be submitted. The defendants were directed to bear the cost. However, in the impugned order order dated 21.4.2018, the City Civil Court observed that it had refused to grant an ad-interim reliefs in order dated 12.5.2016 and that the said order is not challenged. The Court has also observed that if she has removed the said structure then there is nothing remaining to be demolished and therefore, there is no question of grant of ad-interim relief and, therefore, the ad-interim relief was rejected.

2. On hearing of the learned counsel for the Appellant and Respondent Nos.2,3 and 4 it can be seen that the proceedings have checkered history and on three prior occasions, notices were issued by the Corporation for demolition of the premises which are occupied by the Appellant in the

capacity as a tenants and the Respondent Nos.2,3 and 4, who are the owners of the suit premises. The notices were issued in the year 1977, 1995 and 2014. On all the three occasions, whenever notices were issued, the said structures came to be erased or removed and the Learned counsel appearing on behalf of the Defendants has tendered on record the sheet, reflecting the changes in the structures in pursuance of the notices issued in 1977, 1995 and, lastly in the year 2014. It can be thus seen from the facts and the same are not disputed by the parties that certain structures came to be removed pursuant to the notice issued by the Corporation and at present it is disputed as to what structures should have been removed and in order to ascertain this fact, the City Civil Court has rightly appointed a Commissioner and directed to ascertain the present status of the property and directed to survey the same and submit a report.

3. The learned counsel for the Appellant would submit that the report should be tendered on 28th June, 2018.

4. In such circumstances, it would be appropriate that the parties should maintain a status quo as on today till the report is received by the Court as on 2.5.2018 when the inspection was carried by the City Survey Officer. Then the City Civil Court is directed to consider the said report along with notices issued by the Municipal Corporation under section 351 of the MMC Act.

It is made clear that the Appellant will not make any changes in the existing structure and the existing structure should be kept as it is.

5. In view of the aforesaid observations, nothing survives in the Appeal from Order and the same is disposed of accordingly.

6. In view of the disposal of the Appeal from Order, civil application which is filed therein is also disposed of.

[BHARATI H. DANGRE, J.]