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

**APPEAL FROM ORDER NO. 402 OF 2018
WITH
CIVIL APPLICATION NO.529 OF 2018
IN
APPEAL FROM ORDER NO.402 OF 2018**

Shamim Akar Shaikh and ors ... Appellants.
V/s.

The Municipal Corporation of
Greater Mumbai and ors ... Respondents

Mr. Maroof M. Khan a/w Shubham G. More, for the
Appellants.

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

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] Admit.

3] With the consent of learned counsel for both the parties,
this appeal is taken up for final hearing at the stage of admission
itself.

4] This appeal takes an exception to the order dated
30.6.2018, passed by City Civil Court, thereby refusing ad-interim
relief sought in the Notice of Motion No.2408 of in L.C. Suit No.1612 of
1/5

2018.

5] As per contention of the appellants, they are occupying the premises bearing Nos.15, 16, 17, for years together and are having various documents like Electricity Bills, Ration cards, Adhar Card, Identity Card issued by the Election Commission of India etc. and all these documents are on the address of the suit premises. They had also applied for consideration of their eligibility as residents of slum area and now they are producing on record the letter issued by the Municipal Corporation on 14.1.2015, stating that they were considered as the eligible residents of the slum area. However, till today they have not received any communication to that effect. According to learned counsel for appellants, respondent corporation without following due process of law wants to evict them and hence, respondent should be restrained from doing so.

6] It is submitted by learned counsel for the appellants that the trial Court has also in its order, prima facie held that the appellants are holding the premises for long time and they are having various documents showing their residential address at Indira Nagar area. Despite that the trial Court has not granted relief of ad-interim injunction and therefore, considering the material produced on record by the appellants, they should be protected till the Notice of

Motion filed by them is decided .

7] As against it, it is pointed pointed out by learned counsel for respondent corporation, the suit premises are causing hurdle and coming in the way of construction work of Hancock Bridge, which is in progress. It is submitted that there are 82 hutments, out of which 51 are found eligible and they were allotted alternate premises. It is submitted that in the year 2016 itself, respondent Municipal Corporation has considered the claim of the hutment dwellers in the said area and those who are found eligible, were granted Project Affected Premises. As regards the appellants herein, whose names are appearing in respect of premises bearing Nos. 15, 16 and 17, they are not found eligible for getting alternate premises. In view thereof, it is submitted that after following due process of law, respondent corporation has called upon the appellants to vacate the suit premises as it is causing obstruction to the construction of Hancock bridge.

8] In my considered opinion, once it is held that the appellants are not found eligible for Project Affected Premises and that too in the year 2016 itself, the appellants have lost their case of raising any obstruction to the construction of the bridge. Apart from

that, at the end of suit, if the appellants are found to be eligible for such alternate premises, they will be given the same, but at this stage no restraining order can be passed by allowing these structures to remain at the site thereby obstructing the work of the public importance, that is the work of construction of Hancock Bridge. The trial Court has considered this aspect and therefore, rejected the prayer for ad-interim relief.

9] As regards the contention of the learned counsel for the appellants that these structures of the appellants are situated at a distance of 200 meters from the Hancock bridge and they are not coming in the way of construction of bridge, the photographs produced on record by respondent are more than sufficient to show that these structures are close to the construction of the Bridge and these are the only structures, causing obstruction to the construction of Bridge. Moreover, it is for the respondent corporation which is statutory planning authority to decide whether these structures are coming in the way of construction of Bridge or not, and it is not job of the Court to consider this aspect.

10] Therefore, absolutely, no interference is warranted in the impugned order, passed by the trial Court.

11] The Appeal from Order, therefore, being without any merit, stands dismissed.

12] In view of dismissal of Appeal, Civil Application Civil Application No.529 of 2018, becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]