

Sarnobat

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

**APPEAL FROM ORDER NO.631 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 806 OF 2016**

The Municipal Corporation of Gr. Mumbai. ... Appellant.

Vs.

1. Madanlal Pukhraj Jain & Ors. ... Respondents.

Mrs. Madhuri More, for the Appellant/Corporation.

Mr. J. S. Kini I/by Mr. Suresh Dubey, for the Respondents.

CORAM : V. M. DESHPANDE, J.

DATE : 12th JULY, 2018.

P. C. :

1. Heard the learned counsel Mrs. More for the appellant/Corporation and learned counsel for respondent. Challenge which is set up in the present appeal is to the order dated 16th January 2015 passed in Notice of Motion No. 2635 of 2014 in L.C. Suit No. 1827 of 2014, by which the Court below directed the appellant not to take any action against the respondents/plaintiffs in respect of the Suit property except in accordance with law. The learned counsel for the appellant states that in view of Section 149 of the Maharashtra Regional Town Planning Act the Civil Court has no jurisdiction. The jurisdiction of Civil Court is not ousted just for asking. The party who seeks that the Civil Court has no jurisdiction is under obligation to point

out before the said Court as to how the Court has no jurisdiction. In the present case, admittedly this point was not at all taken by the Corporation before the Court below. Be that as it may. Even for the perusal of the plaint, allegation itself crystal clear prima facie that the Civil Court has jurisdiction to decide cause that was brought before the said Court.

2. In notice under Section 53(1) of the M.R.T.P. Act, 1966 was issued against the plaintiffs with a statement that the plaintiffs have made certain construction for which no permission was obtained. It is not in dispute that the plaintiffs filed an application before the planning authority for regularization. The said prayer for regularization is rejected by the planning authority. However, it is also admitted position that at the time when the application for temporary injunction was decided by the Court below and even today that the statutory appeal filed on behalf of respondents/plaintiffs under Section 47 of the MRTP Act is still pending before the competent authority. The rejection of regularization is still sub-judiced before the competent Court. In that view of the matter, the Court below has rightly considered the case of the plaintiffs that if pending the effect is given to the impugned notice there will be irreparable loss to the plaintiffs. Further the plaintiffs have pointed out the prima facie case by showing that his statutory appeal is pending before the competent authority. No exception can be taken to

the order dated 16th January, 2016. Hence order;

ORDER

- 1) Rejected.
- 2) All Civil Applications are disposed of.

[V. M. DESHPANDE,J.]