

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

**APPEAL FROM ORDER (ST.) NO. 28659 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 28660 OF 2018**

Prakash Chimanlal Solanki & Ors. V/s. The Municipal Corporation of Greater Mumbai	...	Appellants Respondent
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- Mr.Pradeep J. Thorat a/w. Mr.Bholaprasad S. Shukla for the Appellants.
- Ms.Orja Dhond for the Respondent-Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellants and learned counsel for the Respondent-Corporation.

2] This Appeal takes an exception to the order dated 27/09/2018 passed by the City Civil Court, Borivali Division, Dindoshi, Mumbai, whereby ad-interim relief is refused in Draft Notice of Motion in L.C. Suit No.2711 of 2018.

3] The said Draft Notice of Motion was filed by the Appellants herein for restraining the Respondent-Corporation from taking any

action of demolition of the suit premises, without following due process of law.

4] The Trial Court has, after appreciating the entire material on record, found that the Respondent-Corporation is following due process of law and thereafter, had taken the requisite action. Even in this Appeal from Order, it can be seen that earlier the Notice under Section 354A of The Mumbai Municipal Corporation Act, 1888 (*for short, "MMC Act"*) was issued to the landlord of the suit premises on 28/10/2017 and that too, after carrying out necessary inspection. The said notice was issued to the occupiers also. Thereafter, the construction, which was found to be illegal, was demolished after passing the reasoned order and after considering all the material which was produced on record by the owner of the said building. That detailed order under Section 351 of MMC Act is passed on 16/11/2017 and then the demolition had taken place on 09/12/2017 and 27/08/2018. The report to that effect along with the photographs taken from the digital camera are produced on record.

5] If despite all these facts, the Appellants contend that the Respondent-Corporation is not following due process of law, one can hardly find any substance or truth therein and hence, the trial Court was very well justified in refusing such ad-interim relief, when the

landlord against whom the order under Section 351 of MMC Act was passed, is not coming before the Court but putting the tenants in forefront and contending that due process of law is not followed. The due process of law is already followed by issuance of notice under Section 354A of MMC Act and thereafter, passing the reasoned detailed order under Section 351 of MMC Act. Hence, the 'Circular', dated 29/04/2006, on which the reliance is placed or the judgment of this Court in the case of *Abdul Hasan Shaikh Mansuri Vs. Mun. Corporation of Mumbai and Ors.*, 2007 4 AIR (Bom) (R), is hardly of any assistance to the Appellants, as in the facts of the present case, I do not find that such due process of law is not followed. Therefore, there is absolutely no reason made out to interfere in the reasoned order passed by the trial Court.

6] The Appeal being without merit, stands dismissed.

7] At this stage, learned counsel for the Appellant submits that though the trial Court has refused the ad-interim relief, it has granted the protection to the structure till the next date and the said protection was continued by this Court and therefore, the same protection be extended. Learned counsel for the Respondent-Corporation strongly resists the same.

8] In view thereof, considering that as the Appeal is disposed of on merit, such protection cannot be extended and hence, this request stands rejected.

9] At this stage, it is clarified that the trial Court will not be influenced by above referred observations made by this Court, while deciding the Notice of Motion pending before it.

10] In view of disposal of the Appeal, nothing survives in the Civil Application, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]