

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

**APPEAL FROM ORDER (ST.) NO. 36537 OF 2018
ALONG WITH
CIVIL APPLICATION (ST.) NO. 36538 OF 2018**

Khalil Ahmed Nawab Ali Subhedar .. Appellant
Vs.
Municipal Corporation of Greater
Mumbai .. Respondent

Mr.Virendra T. Dubey, Advocate for appellant.

Mr.Rajiv Chavan, Senior Advocate a/w. Ms.Priyanka Chavan, Advocate,
Ms. Sumangala Yadav, Advocate i/b Mrs. Madhuri More for respondent-
MCGM.

**CORAM : A.S. CHANDURKAR, J.
DATE : 22ND DECEMBER 2018**

P.C.

1 In this appeal, the order passed by the trial Court dated 19th December 2018 refusing to grant ad-interim relief so as to restrain the Municipal Corporation from acting upon its notice dated 7th December 2018 is under challenge. The trial Court on a *prima-facie* consideration did not accept the plea of the appellant that the structure in question was falling in Category 'B' as per the Policy Guidelines dated 20th March 2017. According to the appellant, since the said structure was in existence prior to 1st January 2000 and was covered by the Government Resolution dated 16th May 2015, the structure was entitled to be protected till the validity of the notice impugned in this suit was adjudicated upon.

2 On the other hand, according to the Municipal Corporation, the said structure ought to be considered from the perspective of Category 'A' as the requirements of Government Resolution dated 16th May 2015 were not satisfied and there were no documents to indicate that the structure was in existence prior to 1st April 1962. After considering the documents on record, the trial Court refused to grant any ad-interim relief.

3 The learned counsel for the appellant submitted that in the light of various documents that were submitted by the appellant coupled with the fact that an appeal as contemplated by Clause 9 of the Policy Guidelines in question was pending, the structure in question deserves to be protected. The learned counsel referred to various documents including the Assessment List indicating assessment on 1st April 1988 to urge that in terms of Category 'B' of that Policy, the appellant was entitled to protect his structure. The learned counsel also referred to the Government Resolution dated 15th May 2015 as well as the judgment of the Division Bench in ***Dr.Kesharsingh Ramkrishna Patil & Ors. Vs. State of Maharashtra & Ors.***¹. It was thus submitted that atleast till the statutory appeal was decided, the structure in question to be protected.

4 On the other hand, the learned Senior Counsel for the respondent submitted that in absence of any document to indicate the eligibility in the

1 Unreported Judgment in WPL/3394/2017 with WPL/3605/2017 dt.17.09.2018.

form of Photo-pass even for Category 'B', the appellant was not entitled for protection. It was submitted that in the year 2000, a notice was issued to the appellant in the matter of seeking information for issuance of photo-passes but till date as relevant documents were not available with the appellant no photo-pass was produced. Considering the nature of work undertaken which was widening of the road, there was no case made out to grant any ad-interim relief.

5 Heard the learned counsel and perused the documents on record. As per the Policy Guidelines of the Municipal Corporation dated 20th March 2017, the necessary documents that are required for the eligibility have been stated therein. *Prima-facie*, it is seen that the appellant has not been able to produce any photo-pass as required for being eligible under Category 'B'. As regards the submission that the appeal filed by the appellant is pending before the Appellate Authority, it may be noted that if the appellant is found entitled and is considered eligible in Category 'B', the consequent benefits therefrom would naturally be available to the appellant. As the action is being taken after issuing due notice to the appellant, the observations of Division Bench in the cited decision do not apply. In the light of the public work undertaken, as stated in the notice dated 29th November 2018 and 7th December 2018, I find that the discretion exercised by the trial Court was reasonable, not warranting any

interference. In that view of the matter, I am not inclined to entertain the appeal. By clarifying that the proceedings before the trial court be adjudicated on its own merits without being influenced by the observations made either by the trial Court or by this Court, this Appeal from Order stands dismissed. Pending civil applications also stand dismissed.

(A.S. CHANDURKAR, J.)