

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

**APPEAL FROM ORDER NO.706 OF 2019
WITH
CIVIL APPLICATION NO.841 OF 2019**

Purshottam Nansingh Solanki and Anr. ... Appellants
(Org. Plaintiffs)

Vs.

Municipal Corporation of Greater Mumbai
and Ors. ... Respondents
(Org. Defendants)

.....

Mr. Atal Bihari Dubey for the Appellants.
Mrs. Madhuri More for MCGM/Respondent.
Mr. Ajay Panicker with Amit Kakri I/b. Ajay Law Associates for
Respondent No.4.
Mr. Shardul Singh a/w Javer N. Mamniya for Respondent No.6.

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CORAM : M. S. KARNIK, J.

DATE : 29th JULY, 2019.

P. C.:

1. Heard learned counsel for the appellants.
2. The order under challenge is dated 12.02.2019 passed by the Judge, City Civil Court, Mumbai refusing to grant ad-interim relief to the appellants-original plaintiffs. The appellants by Notice of Motion prayed for temporary injunction restraining the Corporation from acting in pursuance of the notice dated 20.08.2018 issued under Section 354 of the Mumbai Municipal Corporation Act ('M.M.C. Act' for short).

Letters of intimations for demolition are also challenged. It is the contention of the learned counsel for the appellants that they are the tenants in respect of the suit structure which comprises of ground + one floor. According to the appellants no notice under Section 353-B of the M.M.C. Act was ever issued before taking action under Section 354 of the M.M.C. Act.

3. Learned counsel for the appellants would invite my attention to the notice dated 20.08.2018 issued under Section 354. He would submit that the said notice is addressed to the Court Receiver. He would further invite my attention to the addressees mentioned in the notice which does not reflect the name of the appellants-occupants.

4. Learned counsel would further submit that the notice issued under Section 354 is not in consonance with the procedure laid down by this Court in Writ Petition (L) No.1135 of 2014. He would further submit that the structure is in habitable condition. He relied upon certain photographs of the suit structure.

5. Learned counsel for the respondent - Corporation as well as learned counsel for respondent no.6 pointed out that the

ground + one floor structure is in possession of the Court Receiver and the occupants therein are in occupation as agents of the Court Receiver and rent is being deposited with the Court Receiver. He would therefore submit that the notice to the Court Receiver is sufficient compliance as no separate notice to occupants is necessary. He would further submit that the notice has already been given by the Corporation under Section 353-B of the M.M.C. Act on 12.5.2018.

6. Heard. I have gone through the order passed by the Trial Court. I do not see any reason to interfere with the order passed by the Trial Court. I have also perused the structural auditor's report which classified the building as 'C-1' category. Nothing has been placed on record and/or no auditor's report has been placed on record by the appellants to indicate otherwise.

7. I have also seen the photographs which apparently indicate that the suit structure is in dangerous condition.

8. The property in question is in possession of the Court Receiver. The occupants are in occupation of the suit premises as agents of the Court Receiver.

9. In this view of the matter, if the Trial Court is of the opinion that the notice to the Court Receiver is sufficient compliance, I do not see any reason to interfere with this view of the Trial Court. It is further seen that the letters of intimation dated 06.11.2018 and 16.11.2018 are served upon the appellants. The structural audit report of M/s. Bhoomi Consultants which is on record clearly indicates that the structure in question is ground + one floor falls under the 'C-1' category. As there is no conflicting report on record in so far as the suit structure is concerned, the question of referring the matter to the Technical Advisory Committee in terms with directions of the Division Bench of this Court or as per the guidelines now in force does not arise. For all these reasons, I do not find this to be a fit case to interfere with the order passed by the Trial Court.

10. The Appeal is dismissed.

11. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)