

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 376 OF 2018
WITH
CIVIL APPLICATION NO. 489 OF 2018

The Designated Officer No. (I),
Assistant Engineer,
(Building & Factory) and anr. .. Appellants
Vs.
Dhananjay Harshadroy Rawal and anr. .. Respondents

Mrs.Madhuri More, for the MCGM.
Mr.U.J.Makhija a/w Ms.Preeti Shah, for the Respondents No.1 &
2.

CORAM : M.S.KARNIK, J.

DATE : 16th JULY, 2019

P.C. :

. Heard learned Counsel for the appellants and
learned Counsel for the Corporation. The appellants –
Municipal Corporation of Greater Mumbai has challenged the
order dated 05/01/2017 passed by the learned Judge, City Civil
Court, Mumbai in Notice of Motion No. 280 of 2016 taken out in
Long Cause Suit No. 47 of 2016.

2. The respondents filed Notice of Motion in the Suit praying for interim relief of temporary injunction restraining Municipal Corporation from demolishing or pulling down or removing the suit premises or any part thereof in pursuance of notice dated 08/05/2015 issued u/s 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the said Act') and order dated 28/12/2015 passed on the reply to the said notice by the Corporation. On the last occasion, when the matter was heard, learned Counsel appearing on behalf of the Corporation requested that officers wanted to inspect the suit premises. Accordingly, the suit premises were inspected and by inspection report dated 02/07/2019, following violations are observed which are beyond approved plan.

“1) Sloping roof at North West side of flat is not constructed as per last approved plan and found merged into habitable area of living room/dining room and Bed room.

2) Planter area at Bed rooms at North and North East sides are found filled and used as balcony.”

3. Learned Counsel for the appellants - Corporation submitted that it is now confirmed that there are violations and hence the Corporation was justified in issuing the notice. She would contend that the trial Court was not justified in allowing the Notice of Motion thereby granting interim relief in favour of the respondents. Learned Counsel for the respondents on the other hand supported the order passed by the trial Court. He would submit that the order is a reasoned order. He would further point out that the Suit is now kept on 23/07/2019 for filing of the affidavit of evidence. He would submit that since the Suit is pending and evidence is being recorded and order passed by the trial Court is a reasoned order, no interference is warranted.

4. I have gone through the order passed by the trial Court. Even the Suit is fixed for filing of the evidence of the respondents. In the light of the reasons recorded by the trial Court, I see no reason to interfere with the order passed by the trial Court. Considering the controversy, the trial Court is

requested to expedite the Suit. Needless to mention that the trial Court shall not be influenced by any observations made in the order disposing Notice of Motion while deciding the Suit. Appeal from order is rejected. Civil Application does not survive & is accordingly disposed of.

(M.S.KARNIK, J.)