

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

**APPEAL FROM ORDER NO.584 OF 2018
WITH
CIVIL APPLICATION NO.789 OF 2018
IN
APPEAL FROM ORDER NO.584 OF 2018**

Prakash Chhabria and Ors. ...Appellants
Versus
Municipal Corporation of Greater
Mumbai ...Respondent

.....

Mr. Atul Damle, senior Advocate with Ms Yasmin Bhansali and Ms
Kahmish Khan I/b. M/s. Yasmin Bhansali and Co. for the Appellant.
Mrs. Madhuri M. More for the Respondent-MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE: 26th FEBRUARY, 2019.

P.C.:-

With consent, heard finally at the stage of admission.

The Appellant herein has challenged the order dated
10/8/2018 whereby the learned Judge, City Civil Court at Dindoshi,
Borivali Division, Mumbai, rejected the prayer for ad-interim relief in
draft notice of motion in S.C. Suit No.1401 of 2018.

2. Heard Mr. Atul Damle, the learned senior counsel for the
Appellants and Mrs. Madhuri More for the Respondent -Corporation. I
have perused the records and considered the submissions advanced by

the learned counsel for the respective parties.

3. The Appellants herein had approached the civil court with a prayer to restrain the Respondent from demolishing the garages pursuant to the notice dated 4/4/2018 and final order dated 11/5/2018 issued under the provisions of M.M.C. Act, 1888.

4. The dispute in the suit is in respect of the garages Nos.17, 18, 19, 20 and 21. By the impugned notice dated 4/4/2018 issued under Section 351 of the M.M.C. Act and final the order dated 11/5/2018 passed under the provisions of the M.M.C. Act, the Appellants were called upon to demolish the said garages.

5. The learned counsel for the Appellants has alleged that by the impugned notice and final order the Corporation is in fact, seeking to demolish garages No.G1, G3, G4 and G5, which are existing since 1984-1985. He submits that the said garages have also been assessed by the Corporation for property tax. He further submits that the learned Trial Court had refused to grant ad-interim relief mainly on the ground that documents produced by the Appellants pertains to garages No.G1, G3, G4 and G5 whereas action is sought to be taken in respect of parking spaces Nos.17 to 21.

6. The learned counsel for the Corporation has today placed on record the letter dated 26.2.2019 addressed by the Designated Officer-II H/W Ward, wherein it has been clarified that the garages G1, G3, G4 and G5 and garages 17 to 21 are one and the same, as per the approved plan No.CE/8039/BSII/AH dated 17/7/1986. The learned counsel for the Corporation, however, contends that the Appellants have enclosed said garages without prior permission of the Corporation.

7. As stated earlier, the learned Judge had refused to grant ad-interim relief solely on the ground that the documents produced by the Appellants were in respect of garages No.G1, G3, G4 and G5 and that the Appellants had not produced any documents to show that they were permitted to construct new garages No.17 to 21. The letter now produced by the Corporation reveals that the garages No. G1, G3 to G5 and garages No.17 to 21 are the same structures. Hence, the application has to be decided taking into consideration the documents produced by the learned counsel for the Corporation in respect of the garages. Till such time it is necessary to protect the said structures. Hence, both the parties are directed to maintain status-quo in respect of the subject garages till disposal of the notice of motion.

8. The trial court to decide the notice of motion as expeditiously as possible and in any event, within a period of eight weeks from the date of receipt of copy of this order. Parties are directed to complete their pleadings within a period of four weeks from the date of this order.

9. The appeal from order stands disposed of.

10. In view of disposal of the appeal from order, the civil application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)