

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO.24774 OF 2019
ALONG WITH
CIVIL APPLICATION (ST.) NO.24777 OF 2019**

Mr. Trimbak Valmik Suranje ... Appellant

Versus

Municipal Corporation of
Greater Mumbai
through Asst. Municipal
Commissioner

... Respondent

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Mr. R.A. Thorat, Senior Advocate, i/b Mr. S.P. Chavan for the Appellant.

Mr. Vinod Mahadik for the Respondent-MCGM.

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CORAM : S.C. GUPTE, J.

DATE : 6 SEPTEMBER 2019

P. C. :

Heard learned Counsel for the Appellant and the Respondent.

2 This Appeal from Order challenges an order passed by the City Civil Court (Borivali Division), Dindoshi Branch, Mumbai on a draft notice of motion filed by the Appellant (original plaintiff). By the impugned order, ad-interim relief on the draft notice of motion was refused to the Appellant. The grievance of the Appellant is that he is in occupation of a structure, which is on a private land, and the impugned notice for removal of the structure issued by the Respondent-corporation is illegal. On the other hand, it is the case of

the Respondent-corporation, which has weighed with the trial court, that the notice structure stands on a footpath, which is a part of a public street, namely, main Kasturba Road. It is submitted that the documents relied upon by the Appellant do not pertain to the notice structure, but to an altogether different structure. The City Civil Court, in its impugned order, has observed that the impugned notice and the sketch drawn in it *prima facie* show that the notice structure was standing on the street, that is to say, footpath forming part of main Kasturba Road. The court has also observed that there was no case of any permission or sanction for the notice structure standing on the footpath. The court has, accordingly, held that the Appellant had no *prima facie* case for any ad-interim protection.

3 The impugned notice issued by the Respondent-corporation under Section 314 of Mumbai Municipal Corporation Act, 1888 (“Act”) is in respect of a structure standing on the footpath forming part of Kasturba Road, whereas the documents relied upon by the Appellant are in respect of a structure forming part of CTS No.159. That obviously means that the suit structure, for which the impugned notice is issued, is different from the structure for which documents have been produced by the Appellant. If and to the extent the structure, against which the Respondent-corporation proposes to proceed under Section 314 of the Act, is on the footpath or forming part of Kasturba Road, there is absolutely no impediment to do so. No doubt there is no proposal for removal of any structure forming part of CTS No.159, but then the impugned order of the trial court makes

it clear that what it is sought to be demolished by the Respondent-corporation, and concerning which the Appellant is not granted any ad-interim relief, is the structure standing on the footpath forming part of Kasturba Road, and to that extent, the order cannot be faulted.

4 Accordingly, there is no merit in the appeal. The Appeal from Order is dismissed. It is, however, clarified that the action proposed by the Respondent-corporation relates to the structure standing on the footpath forming part of Kasturaba Road, as shown in the impugned notice. It is also clarified that the entitlement, if any, of the Appellant/plaintiff in accordance with the policy of the Respondent-corporation to any alternative accommodation in lieu of the structure occupied by him, is a matter, which will be considered at the hearing of the notice of motion. The observations made by the trial court in its impugned order in this behalf shall not come in the way of any decision on this subject.

5 In view of the dismissal of the appeal, the Civil Application does not survive and is disposed of.

(S.C. GUPTE, J.)