

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

**APPEAL FROM ORDER NO.726 OF 2018
WITH
CIVIL APPLICATION NO.974 OF 2018**

Girish Co-operative Housing Society Limited	...	Appellant
Versus		
Shree Shailya Mallikarjun Education Trust And Others	...	Respondents

.....

Mr. Rajendra Sorankar for the Appellant.
Mr. Vineet Naik, Senior Advocate i/b Rakesh Reddy for Respondent
Nos.1(a) to 1(i).
Mr. R.M. Pethe for Respondent Nos.2 and 3.

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CORAM : S.C. GUPTE, J.

DATE : 04 OCTOBER 2019

P. C. :

. The Appeal from Order challenges an appellate order passed by District Court at Pune in an interim application in Civil Appeal. The appeal was by the Appellant herein (original defendant), whilst the application on which the impugned order came to be passed was by Respondent No.1 herein (original plaintiff).

2 The controversy concerns notices of unauthorized construction issued by Pune Municipal Corporation (“PMC”) to Respondent No.1 trust. These notices were the subject matter of challenge in the first

Respondent's suit. By a judgment and decree dated 2 December 2015, the Respondents' suit was decreed by the Court of Civil Judge Junior Division, Pune. The Respondent-corporation (respondent nos. 2 and 3 to the present Appeal from Order) were restrained by a perpetual injunction from demolishing the construction made by Respondent No.1 herein in pursuance of the impugned notices. The Respondent-corporation was, however, at liberty to resort to the relevant provisions of law and take appropriate action against Respondent No.1, if it was its case that the construction carried out by Respondent No.1 was illegal. This decree was challenged by the Appellant herein before the District Court. During the pendency of the appeal, an intimation was issued by the corporation to Respondent No.1 trust on 8 November 2017, conveying to the latter that there was no application for regularization of unauthorized construction made in their school by Respondent No.1 trust in the record of the corporation and that accordingly, it was not possible to regularize the unauthorized construction in the suit property under the Gunthewari Act. Aggrieved by this intimation and apprehending that the Respondent-corporation shall take coercive action of demolition of the suit building or interfering with the school activities, Respondent No.1 trust filed an application in the Appellant's civil appeal for interim protection. That application was allowed. The intimation dated 8 November 2017 issued by the Respondent-corporation was stayed pending the disposal of the appeal and the Respondent-corporation was restrained from taking coercive action against the suit building or interfering with the school activities of Respondent No.1 trust. This

order is the subject matter of challenge in the present Appeal from Order at the instance of the Appellant-society, who was, as noticed above, the defendant in the suit.

3 The main objection of the Appellant to the impugned order is that the intimation dated 8 November 2017 issued by PMC is not the subject matter of challenge in the present suit. It is submitted that even whilst disposing of the plaintiff's suit, the trial court had reserved liberty unto PMC to resort to law, if it was its case that the construction carried out by Respondent No.1 trust (i.e. the plaintiff) was unauthorized. It is submitted that under the garb of impugning the intimation of 8 November 2017, Respondent No.1-trust has managed to stall any action on the part of PMC in respect of the unauthorized construction carried out by Respondent No.1 trust.

4 It is true that the intimation of 8 November 2017 is not the subject matter of challenge in the suit and would have to be separately challenged by Respondent No.1 trust. But it is equally true that no coercive action on the part of PMC can be initiated against Respondent No.1 trust simply on the basis of that intimation, since the corporation is restrained from taking steps against the trust except by following the provisions of law. If and to the extent any coercive steps including steps for demolition are initiated against Respondent No.1 without following due process of law, such steps would certainly be covered by the subject matter of the present civil appeal before the District Court; such steps would come within the injunctive relief

mandated by the trial court. There is, thus, no merit in the challenge to the impugned order of the appeal court.

5 Considering the nature of the controversy, however, it would be in the interest of justice to dispose of this appeal by clarifying that the impugned order passed by the District Court shall not come in the way of PMC (Respondent Nos.2 and 3 to the present Appeal from Order) resorting to applicable process of law for proceeding against the purported unauthorized construction of the school by Respondent No.1 trust. What the impugned order implies is that simply on the basis of intimation of 8 November 2017, Respondent Nos.2 and 3 or their officers or agents cannot take coercive action against the purported unauthorized construction of Respondent No.1 trust, but that does not mean that PMC cannot resort to the relevant provisions of the planning law or other provisions available to it for taking action against the construction of the school building by Respondent No.1. All rights and contentions of the parties on merits in that behalf are kept open.

6 The Appeal from Order is disposed of accordingly.

7 In view of the disposal of the appeal, the Civil Application does not survive and is disposed of.

(S.C. GUPTE, J.)