

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13745 OF 2018**

Kamruddin Ibrahim Teli

.. Petitioner

Versus

The Thane Municipal Corporation

.. Respondent

Mr. V.V. Ugale for petitioner.

Mr. Mandar Limaye for respondent.

CORAM : K.K. TATED, J.

DATE : 28 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. By this writ petition, petitioner/original plaintiff is challenging the order dated 17.10.2018 passed by the Appellate Court in Misc. Civil Appeal No.145 of 2015 and order dated 01.08.2018 passed in Regular Civil Suit No.712 of 2018 by Additional Chief Judicial Magistrate, Thane rejecting petitioner's application below Exhibit-5 for injunction restraining the respondent-Corporation from taking any action for demolition of their structure as per order dated 25.06.2018.

3. The learned Counsel for the petitioner submits that both the Courts below failed to consider the fact that the suit structure is in existence prior to coming into existence of respondent-Corporation. He submits that here there was no question of any permission for carrying out construction. He submits that though all these facts were placed on record before the Courts below, both the Courts erred in coming to the conclusion that petitioner failed to make out the case for injunction. Hence, both the orders passed by the Court below is required to be set aside.

4. On the other hand learned Counsel appearing on behalf of respondent-Corporation submits that after following due process of law, they passed the order dated 25.06.2018. He submits that earlier the petitioner filed writ petition before this Court. In that writ petition, this Court directed respondent to follow the due process of law. He submits that though the notice was issued to the petitioner calling upon him to place on record the documentary evidence to show the authorization of the suit structure, he failed and neglected to reply. Hence, they passed the impugned order dated 25.06.2018 calling upon the petitioner to remove the unauthorized construction. He submits that these

facts were considered by both the Courts below. He further submits that even the suit is not maintainable in view of Section 433 of Mumbai Municipal Corporation Act, 1988. On the basis of this submission, the learned Counsel for the respondent submits that there is no substance in the present writ petition as both the Courts below concurrently held that the petitioner failed to show any cause for interim relief. Hence, writ petition is required to be dismissed with cost.

5. I heard both the sides at length. Earlier matter was heard by this Court. Thereafter, at the request of advocate for petitioner matter was adjourned to enable him to take instructions from his client and or to place on record the documentary evidence to show the authorization of the suit structure, but the petitioner failed to do so. The contentions raised by the petitioner that when they carried out construction of the suit premises when the respondent-Corporation was not in existence. That cannot be accepted at all. At the most, petitioner have to place on record the permission granted by the authority for carrying out construction on the suit structure. As both the Courts below held that petitioner failed to show any documentary evidence about the authorization of the suit structure, I do not

find any reason to interfere in the well reasoned order and the concurrent finding of fact recorded by both the Courts below.

6. Hence, writ petition stands rejected.

7. No order as to costs.

(K.K.TATED, J.)