

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

**APPEAL FROM ORDER NO. 17 OF 2020
WITH
INTERIM APPLICATION NO. 01 OF 2019**

Smt. Suvarna Vinod Chaudhary Appellant/Applicant

Versus

The Municipal Corporation of Greater Bombay Respondent

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Mr. V.K. Fernandes for the Petitioner.
Smt. Madhuri More for the Respondent-MCGM

**CORAM : A. S. GADKARI, J.
DATE : 16th JANUARY, 2020**

P.C.

1. By the present appeal under order 43 of the Code of Civil Procedure, the appellant has impugned order dated 26.11.2019, thereby rejecting prayer of the appellant for extension of earlier ad-interim relief granted by the same Court.

2. Heard Mr. V.K. Fernandes, learned Counsel for the appellant and Smt. Madhuri More, learned Counsel for the respondent Corporation. Perused record annexed herewith.

3. The appellant has filed suit for declaration that, notice dated 25.10.2019 issued under section 354-A of the Mumbai Municipal

Corporation Act, 1988, by the Designated Officer, N-Ward in respect of the suit premises is illegal, bad in law, malafide, not executable in law, null and void; and for other consequential reliefs. The appellant has also filed a draft Notice of Motion in L.C. Suit No. 2940 of 2019 for interim relief. The trial Court, initially granted ad-interim relief however by the impugned order dated 26.11.2019, and has rejected her prayer for continuation of the said ad-interim relief.

4. It is the contention of the appellant that she is owner of Vasanti Niwas Chawl and is in use, occupation and possession of Room No.3 of the Chawl. The said Chawl admeasuring 30' x 40', is constructed with brick masonry wall and A.C. sheet roof. The said Chawl is situated in Survey No.36 (part) and 37(3) near Trimurti Maidan, R.B. Kadam Marg, Bhatwadi Kaju Pada, Barve Nagar, Ghatkopar (West). In its notice dated 26.10.2019, issued to the appellant pertaining to the aforesaid suit structure, it has been categorically alleged that, unauthorized excavation and construction in an open ground in front of room No.3 of the said Chawl has been undertaken by the appellant. The Photographs demonstrating said excavation and preliminary construction activities were produced before the Trial Court by the respondent-Corporation.

5. The learned counsel for the appellant submitted that, the Corporation has issued property bill to the appellant and/or to the predecessor-in-title of the appellant. He pointed property bills dated 31.03.1961 and 10.07.1991. He submitted that, the suit structure is standing prior to 1961 and therefore it is a protected structure as per the policy of the Corporation. He submitted that it is therefore, necessary for the Trial Court to adjudicate upon the said aspect and till that time interim relief may be granted in her favour.

6. A minute perusal of the aforesaid two documents relied upon by the Appellant would indicate that, the property bills are issued for house No.6965(6), 86-B, Hill side, Jivdaya Lane Chawl and the trustee of the said Chawl mentioned therein as Zaveribai B. Nathani and seller Devakinandan Subhimisir. Both these documents does not mention description of the property as mentioned in para No.1 of the plaint. Prima facie, the said two documents relied upon by the appellant are pertaining to some other property and not the property in question. As noted earlier, in notice issued by the Corporation under Section 354-A of the Mumbai Municipal Corporation Act, the Corporation specifically alleges particular acts being carried out by the appellant in the suit property. The appellant has failed to produce on record any permission granted by the Corporation

and/or by any other competent authority to carry out construction activity on the said property.

7. In view thereof, I find that there is no need to interfere in the order passed by the Trial Court. There are no merits in the appeal. Appeal is accordingly dismissed.

8. In view of dismissal of Appeal, Interim Application No.01 of 2019 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)