

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

**APPEAL FROM ORDER NO. 129 OF 2022
WITH
INTERIM APPLICATION NO. 2142 OF 2022
WITH
INTERIM APPLICATION NO. 700 OF 2022**

**SNEHA
NITIN
CHAVAN**

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Date: 2022.04.22
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K.S.L. Home Maker Private Ltd. .. Appellant

Versus

The Municipal Corporation of Greater .. Respondents
Mumbai and Ors.

...

Mr. Arun Panicker for the appellant.

Mr. Dharmesh Vyas a/w Om Suryavanshi for the respondent/
MCGM.

Mr. G.S. Godbole a/w Medhavin Bhatt i/b MV Law Partners for
intervenor in IA/2142/2022.

Mr. Abhijeet Rasal(Sub-Engineer) (Maint) 'D' Ward present.

CORAM : BHARATI DANGRE, J.

DATED : 19th APRIL, 2022

P.C:-

1. Heard the learned counsel for the Appellant and the
learned counsel for the Corporation.

The Appellant is aggrieved by the rejection of ad-interim
relief of the draft notice of motion at the hands of City Civil

Court, Mumbai on 14.02.2022.

2. The plaintiff who claims to be owner of land bearing City Survey No.526 Sadashiv Lane, Girgaon with the building Mahimkar standing on, received the notice under Section 299 and 488 of MMC Act, where the Corporation expressed its desire to acquire the property for the purpose of road widening i.e. for public purpose.

The learned counsel for the appellant would submit that in absence of the specifications set out in the notice, particularly as to how much area of the Plaintiff is sought to be acquired, the notices are bad in law.

3. On perusal of the notice which is annexed at Exh.H of the appeal, it can be seen that the Deputy Municipal Commissioner (Zone-I) informed the society that the Corporation intend to take possession of the certain land (not occupied by the building), together with its enclosing wall, hedge or fence if any or platform, verandah, other structure external to the building.

The very said communication intimated to the society that a plan of the regular line referred to, may be inspected in the office of Engineer (Maint/East), “D” Ward, office of the Assistant Commissioner ‘D’ ward and in ‘D’ ward office building, on an application being made, during the office hours.

In the wake of above, it was always open for the Appellant to approach the concerned officer in order to verify what portion of the land of the plaintiffs building/premises is sought to be acquired.

4. In furtherance on the notice being issued, the Corporation has come up clear in its stand in the affidavit which is filed by Sub-Engineer (Maintenance) 'D' ward, while opposing the application and the following statement is made in the said affidavit.

“i) Being aggrieved by the aforesaid order passed by the Hon’ble City Civil Court at Bombay, the Applicant abovenamed has preferred the captioned Appeal from Order and filed the interim application in the present case. I state that the Respondent No.1 has rightly issued the impugned notices dated 22nd January 2021 and 27th January 2022 as the suit land is required by the MCGM for road widening i.e. for a public purpose.

5) I further state that the Respondents are only acquiring a portion of the open space in front of the suit building in accordance with law. Thus, the Respondents are not in any manner encroaching upon the property of the Applicant being the suit building.”

5. The learned counsel for the Corporation has instructions to make a statement which, I deem it fit to record, that the Corporation shall not take possession of any constructed area of the building and the acquisition will be of only the land which is

not occupied by the building i.e. an open structure.

The learned counsel for the Corporation make a statement that they will not demolish any portion which is part of the building and in terms of Section 299 the acquisition shall be only of the structure mentioned in Section 299. Statement is accepted.

6. As far as the impugned order is concerned, the learned Judge cannot be said to have erred in refusing of ad-interim relief when he referred the notice under Section 299 and recorded that acquisition is for public purpose, which is a road widening project and therefore, ad-interim relief is refused.

Upholding the aforesaid order and by recording the statement made on behalf of the Corporation, the Appeal is disposed off.

7. In view of the above order, the pending interim applications do not survive and are disposed off.

(SMT. BHARATI DANGRE, J.)