

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.143 OF 2022
WITH
INTERIM APPLICATION NO.946 OF 2022

Vijay Laxman Bhandhari .. Appellant

Versus

Brihanmumbai Municipal .. Respondent
Corporation through Office of Asstt.
Municipal Commissioner R-Central
Ward

...

Mr.Pradeep Thorat i/b Mr.Ashutosh L. Shukla for the
Appellant.

Mr.Om Suryavanshi for the MCGM-Respondent No.1.

Mr.Arrif A.Bhuti with Mr.Jitendra Singh for the Intervenor.

Mr.Nilkanth Jadhav, Sub-Engineer (B & F) Department, from
R/Central Ward, present in Court.

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CORAM: BHARATI DANGRE, J.

DATED : 08th APRIL, 2022

P.C:-

1. The learned counsel for the Corporation has placed on record the exact location of the notice structure and he has also invited my attention to the recent photographs of the structure dated 05/01/2022.

Responding to the said photographs, the learned counsel

Mr.Thorat would submit that the notice was issued to him prior to the date when the photographs were clicked and this aspect was also pointed out to the City Civil Court. Recording that the plaintiff has prima facie failed to show that the construction work is being carried out with the permission of the competent authority, the ad-interim relief was refused to him.

2. The learned counsel Mr.Thorat submits that if the construction was on-going construction, then notice under Section 354-A could not have been issued, on the premise that the plaintiff has unlawfully commenced and carried out the erection work described in the schedule. In any case, if the position was not so on 26/11/2021, merely because the photographs of that day are not placed on record, the Corporation cannot be said to be belied, particularly, when on 05/01/2022, the photographs indicate the on-going construction work.

3. Since, no prima facie case is made out, particularly when the Officer of the Corporation is present in the Court and states that as on date, building has been raised upto two storied (G+2) and except finishing, the construction is complete, I am not inclined to grant any protection.

Dismissing the appeal from order alongwith it's pending application, request is made to the City Civil Court at Dindoshi, Borivali Division, to decide the Notice of Motion within a period of six weeks from today, upon the pleadings being completed.

4. The observations made above will not cause an impediment to the learned Judge while deciding the Notice of Motion and he shall decide the Notice of Motion on it's own merits.

(SMT. BHARATI DANGRE, J.)