

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.482 OF 2022
ALONG WITH
INTERIM APPLICATION NO.3088 OF 2022

Jacinta Leo Creado @ Jacinta]
Coutinho & Ors.] ... Appellants

Vs.

Municipal Corporation of Greater]
Mumbai & Anr.] ... Respondents

...

Mr. Prasad Apte for the appellants.

Mr. Santosh Parad for the respondent-MCGM.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH MAY, 2022.

P.C. :-

1. The appeal is filed by the appellants, being aggrieved by the order dated 22/04/2022 refusing ad-interim relief in favour of the plaintiffs.
2. The plaintiffs claim to be in exclusive use, occupation and

possession of the respective premises, which are part and parcel of building No.G70(A) comprising of ground plus three upper floors situate at Juhu Gaothan Road No.2, 13th N.S. Road, C.T.S. No.374, J.V.P.D. Vile Parle (W), Mumbai.

3. Upon notice being issued under Section 351 of the MMC Act, alleging that the entire suit building is unauthorized and directing the applicant to demolish the said structure, a civil suit came to be instituted vide L.C. Suit No.916 of 2022. In the notice of motion seeking interim protection, the learned Civil Judge, Bombay City Civil Court, Dindoshi, recorded that the plaintiffs have failed to bring any evidence on record to establish that the upper three floors of the said building are constructed with prior permission of the Corporation. It is also recorded that no sanction plan of the notice structure is placed on record and the City Survey Plans on which reliance is placed, do not show existence of ground plus three floor structure, prior to datum line. Recording that there is no *prima facie* case, ad-interim relief was refused.

4. The learned counsel states that they are in the process of appointing an Architect for preparing a proposal for being forwarded to the Corporation for regularization of the unauthorized structure as it is the policy of the Corporation to permit regularization of the unauthorised construction by imposing necessary penalty. He states that awaiting the said proposal and the decision is being taken on the said proposal, the order passed

by the Corporation shall not be given effect to. On being asked whether the proposal is ready, the learned counsel states that it is in the process and within a period of four weeks from today, the proposal for regularization of the alleged unauthorized construction would be forwarded to the MCGM. He, therefore, seeks protection from demolition of the said structure during the aforesaid period.

5. Since it is not in dispute that the plaintiffs are in use, occupation and possession of the respective suit properties, an opportunity deserves to be afforded to them to seek regularization of the alleged unauthorized construction, subject to the terms and conditions, which the Corporation may emphasize. The learned Civil Judge is, therefore, not justified in refusing the ad-interim relief. Setting aside the said order, the protection is granted to the plaintiffs for a period of four weeks from today. Further the City Civil Court is also directed to take up the notice of motion for hearing on expiry of four weeks and test the effect of the proposal for regularization on the relief sought in the notice of motion.

6. With the aforesaid direction, the appeal is disposed off.

7. In view of the disposal of the appeal, the interim application does not survive and is disposed off as such.

[SMT. BHARATI DANGRE, J.]