

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 278 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 366 OF 2017
AND
CIVIL APPLICATION NO. 693 OF 2017

MOIZ BADRUDDIN MEHTA } **APPELLANT**

V/S.

THE ASSISTANT MUNICIPAL
COMMISSIONER-D-WARD } RESPONDENT

* * * *

**Mr. Amrut Joshi i/by. Mr. Sanket Mungale,
Advocate for the appellant.**

Mr. Siddhesh S. Borkar i/by. Mr. N.A. Mogre, Advocate for the applicant in CAA-693-2017.

Mr. R.Y. Sirsikar, Advocate for the respondent-M.C.G.M.

Coram : Sandeep K. Shinde, J.

Tuesday, 5th April, 2022.

P.C. :

1) Pending suit, challenging the validity of Notice dated 12th March, 2013 issued under Section 354A of the Mumbai Municipal Corporation Act, the trial Court refused to restrain the Corporation from pulling down the notice structure. That order was passed on 28th November, 2016.

Whereafter in Appeal, this Court vide order dated 23rd December, 2016 extended the protection that was granted by the trial Court while dismissing the Notice of Motion. As such, the order granting protection is in force till date.

2) Learned Counsel appearing for the appellant, would contend that, Corporation could not have issued the notice under Section 354A, in as much as, at the material time of issuing notice, there was no ongoing construction activities. Learned Counsel would rely on the order of this Court passed in Appeal from Order No.99/2013 on 31st January, 2013, to distinguish the purport of notice issued under Section 354A and 351 of the M.M.C. Act. Having regard to the facts of the case and in particular that the notice structure, has been protected by this Court, since after dismissing the Notice of Motion, over a period of six years, in my view, it would be expedient to request the trial Court to conclude the Long Cause Suit No. 1246/2013 expeditiously and without being influenced by the impugned order. Keeping all contentions of the parties open, the trial Court, shall make an endeavour to dispose of Long Cause Suit No.1246/2013, preferably before 31st March, 2023. Needless to say that,

interim protection granted by this Court, vide order dated 23rd December, 2016 shall continue to operate till then.

3) Appeal, alongwith all applications therein, are disposed of in the aforesaid terms.

NEETA
SHAILESH
SAWANT

(Sandeep K. Shinde, J.)

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2022.04.06
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