

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 152 OF 2023
WITH
INTERIM APPLICATION NO.2026 OF 2023

Smt. Jyostna Arun Gaikwad

...Appellant

Versus

Municipal Corporation of Greater Mumbai
and Another

...Respondents

...

Mr. Harish R. Pawar, for Appellant.

Mrs. Smita Tondwalkar, for Respondents - MCGM.

...

CORAM : SANDEEP V. MARNE, J.

DATE : AUGUST 25, 2023.

P.C.:

1. By this Appeal Appellant challenges order dated 16 February 2023 passed by the City Civil Court rejecting Notice of Motion No.114 of 2023 for grant of temporary injunction. The Plaintiff has instituted L.C. Suit No.76 of 2023 challenging notice dated 12 December 2022 issued by the Mumbai Municipal Corporation under the provisions of Section 354(A) of the Mumbai Municipal Corporation Act, 1988. The notices in respect of the following structures.

“ Schedule (Description of work):

Ongoing unauthorized construction of structure i.e. compound walls using material M.S. fabricated sheets and angles adm. @ 80 cm X 7 mtr height situated at CTS No.831 Nr. Rolex Shopping Centre, Opp. Topiwala Maternity Home, Bandu Gore Marg, Jawahar Nagar, Goregaon West, Mumbai.”

2. The learned Counsel for Appellant would submit that the compound wall at the vacant plot already exists. All that is done by Appellant is to put fiber/ tin sheets at the compound wall with a view to protect the property for being encroached. He would submit that no other construction activities undertaken at the suit site.

3. Ms. Tondwalkar, the learned Counsel appearing for Respondent-MCGM would oppose the Appeal and support the order passed by the City Civil Court.

4. I have gone through the description of the offending structure described in notice dated 12 December 2022. I have also seen the photographs which shows existence of compound wall at the suit site. Prima facie it appears that the Appellant has merely put in fiber/tin sheets at the existing wall. Photographs do not indicate any other construction activity at the site.

5. Considering the nature of the offending structure, in my view the City Civil Court ought to have extended interim protection to the Appellant.

ORDER

- i) The Appeal is accordingly allowed.
- ii) Order dated 16 February 2013 passed by the City Civil Court is set aside and Notice of Motion No. 114 of 2023 is made absolute in the prayers made therein.
- iii) Appellant undertakes not to carry out any construction activity at the suit site without obtaining necessary development permission from the Municipal Corporation.
- iv) Appeal is accordingly disposed of.
- v) In view of the disposal of Appeal from Order, Interim Application No.2026 of 2023 does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)