

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4066 OF 2023
IN
APPEAL FROM ORDER NO.329 OF 2023**

Sunil Chhabinath Maurya & Anr.	...	Appellants
versus		
Municipal Corporation of Greater Mumbai	...	Respondent

Mr. Kishor Patil i/by Mr. Kishor H. Hase, for Appellants.
Ms. Smita Tondwalkar for MCGM.

CORAM: N.J.JAMADAR, J.

DATE : 27 APRIL 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 3 April 2023 passed by the learned Judge, City Civil Court, Mumbai in Notice of Motion No.3972 of 2022 in L.C.Suit No.2190 of 2022, whereby the learned Judge, City Civil Court, was persuaded to dismiss the Notice of Motion taken out by the Appellants-Plaintiffs to restrain the Respondent-Defendant from taking action in pursuance of the stop work notice dated 18 July 2022 issued under Section 354A of the Mumbai Municipal Corporation Act, 1881 and the speaking orders dated 22 July 2022 and 14 October 2022.
3. The learned Counsel for the Appellants-Plaintiffs submitted that the trial court had initially granted status quo on 17 September 2022 and the said order

continued till the dismissal of the Notice of Motion by the impugned order. As the Officers of the Respondent – Corporation were at the doors of the Appellants, the learned Counsel prayed for an ad-interim relief during the pendency of this application.

4. It was submitted that the notice issued to the Appellants was neither properly constituted nor served on the Appellants. Nonetheless, the learned Counsel for the Appellants would urge that, at this stage, the Appellants are willing to file an application for regularization of the structure which has been erected. The learned Counsel for the Appellants, thus, submitted that the structure be protected till the Municipal Corporation decides the application for regularization in accordance with law. It was urged that it is the statutory right of the Appellants to seek regularization.

5. In opposition to this, the learned Counsel for the Respondent-Corporation stoutly resisted the grant of any relief to the Appellants. It was submitted that the stop work notice was issued when the Appellants-Plaintiffs had started the excavation work. Despite notice, the Appellants continued the work, and in breach of the status quo order, completed the erection. There was no semblance of right in the Appellants to carry out the construction. Such conduct, according to the learned Counsel for the Respondent-Corporation, does not deserve any protection.

7. The impugned notice under Section 354A of the Act, 1888 was given on 18 July 2022. Unauthorized work was described as ‘excavation’. The day on which

status quo was granted, evidently, the building was not fully erected. On the basis of the photographs tendered for the perusal of the Court by the learned Counsel for the Respondent-Corporation, it was submitted on behalf of the Appellants that as on 16 September 2022, walls were erected and the rest of the work was to be carried out. The Appellants are, thus, willing to restore the position to the same state as it obtained on 16 September 2022.

8. Ordinarily the Courts consider it appropriate to provide an opportunity to a party to seek regularization. However, the instant matter is required to be viewed in the totality of the circumstances. It is not the case that the Respondent-Corporation addressed notice after the construction was raised to a substantial level. Notice was issued at the stage of excavation work only. Nor is it the case of the Appellants-Plaintiffs that any efforts were made to obtain the permission before the commencement of the work. On the contrary, the material on record indicates that despite status quo ordered to be maintained by the learned Judge, City Civil Court, the Appellants went on to erect the building in brazen defiance not only of the Development Control Regulations but also the order of the Court. The Appellants-Plaintiffs indulged in illegality of highest order and not a minor irregularity, despite being fully aware of the order of the Court. Such open defiance cannot be tolerated.

9. In the circumstances, the Appellants-Plaintiffs do not deserve any interim relief.

10. The Interim Application stands dismissed.

(N.J.JAMADAR, J.)