



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.326 OF 2023
WITH
INTERIM APPLICATION NO.4051 OF 2023**

Babanrao Sakharam Dherange

... Appellant

versus

The Municipal Corporation of Greater Bombay
and Anr.

... Respondents

Dr. Uday P. Warunjikar i/by Mr. Siddhesh Pilankar, for Appellant.

Mrs. Smita Tondwalkar, for MCGM.

Mr. Vishal Mhaiskar, Asstt. Engineer (B&P) N Ward and Ms. Tuyesh Zodge, Jr. Engineer, B&P N Ward, present.

CORAM: N.J.JAMADAR, J.

DATE : 2 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against the order dated 11 April 2023 passed by the learned Judge, City Civil Court in an unregistered Notice of Motion along with unregistered Chamber Summons in L.C.Suit (St) No.3258 of 2023, whereby the learned Judge refused to grant ad-interim relief to restrain the Defendant - Corporation from taking any action pursuant to the notice dated 9 March 2023 purportedly issued under Section 55 of the Maharashtra Regional and Town Planning Act, 1966.
3. When the Appeal and Interim Application were listed before this Court

on 26 April 2023, this Court was persuaded to continue interim protection granted by the trial court and continued by this Court by an order dated 24 April 2023. This Court had, inter alia, observed as under :

“3.Dr. Warunjkar, the learned Counsel for the appellant invites the attention of the court to the permission granted by the Municipal Corporation on 22nd October 2022 whereby the Plaintiff was permitted to carry out the repairs in respect of the remaining area of the structure, which was not affected in the road widening, subject to conditions stipulated therein.

4. The Defendant seems to have taken a stand that the Plaintiff carried out construction in breach of the terms and conditions subject to which permission to carry out the repair was granted. Eventually, by an order dated 1 March 2023, the permission came to be revoked.

5. Dr. Warunjkar submitted that, in any event, action under Section 55 of the Act, 1966 could not have been resorted to as the Plaintiff was carrying out the construction pursuant to the permission granted by the defendant and the said structure was not of temporary nature.

6. Ms. Tondwalkar, the learned Counsel for the respondent – defendant countered by canvassing a submission that the Plaintiff had not contested the characterization of the structure by the Defendant, which the planning authority is competent to decide under Section 55(2) of the Act, 1966.

7. At the heart of the controversy is whether the Plaintiff – appellant has carried out development in excess of the permission granted by the Municipal Corporation on 22nd October 2022, and in breach of the terms and conditions thereof. Indisputably the structure bearing No.268A, which was affected by road widening, was declared eligible structure. In the circumstances, the question as to whether action under Section 55 of the Act, 1966 could have been lawfully resorted to warrants consideration.”

4. The Court is informed that pursuant to the impugned order allowing the Chamber Summons, the plaint has been amended and the Notice of Motion is listed for hearing on 20 September 2023.

5. In the aforesaid order, this Court has indicated the question which arises for consideration. Since the interim protection is in operation and the plaint has been amended, it may be expedient that the Notice of Motion itself is decided by the Trial Court as expeditiously as possible.

6. The Respondent Corporation may file additional written statement to the amended plaint on or before the scheduled date of hearing of the Notice of Motion.

7. The learned Judge, City Civil Court is requested to decide Notice of Motion as expeditiously as possible and preferably within a period of nine months from 20 September 2023, on its own merits, in accordance with law and without being influenced by the aforesaid observations which were made for the purpose of considering the entitlement for ad-interim relief only.

8. The Appeal stands disposed.

9. Interim Application also stands disposed.

10. Interim protection granted by this Court shall continue to operate till the disposal of the Notice of Motion.

(N.J.JAMADAR, J.)