

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.876 OF 2022**

Judge Anthony Creado and Anr. ... Appellants
versus
Mumbai Municipal Corporation of Greater
Mumbai and Ors. ... Respondents

Mr. Vincent D'Silva with Mr. Sujit Mane, Mr. Prabhat J. Dubey for Appellants.
Ms. Smita Tondwalkar for Respondent No.1.
Mr. Parth K. Mehta i/by Mr. Prasad Apte, for Respondent Nos.3 and 4.

CORAM: N.J.JAMADAR, J.

DATE : 8 MARCH 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 4 January 2020 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Notice of Motion No.1646 of 2019 filed by Respondent Nos.3 and 4 / Plaintiffs seeking inter alia the following reliefs :

“(a) That pending the hearing and final disposal of the present suit, the Defendant Nos.3 to 6 be temporarily restrained from carrying out further construction of whatsoever nature upon the suit property i.e. property bearing CTS No.373 corresponding to Survey No.3, Hissa No.7, area admeasuring 8 Acres and 8 ¾ Gunthas of Village Juhu, Taluka Andheri, Mumbai Suburban District situated at Juhu Gaothan Road No.2, 13, N.S.Road, J.V.P.D. Vileparle (W), Mumbai – 400 049 and the status quo be maintained thereof;

(b) That pending the hearing and final disposal of the present suit, by orders

of this Hon'ble Court, the officers of Defendant Nos.1 and 2 be directed to visit the suit property i.e. property bearing CTS No.373 corresponding to Survey No.3, Hissa No.7, area admeasuring 8 Acres and 3 $\frac{3}{4}$ Gunthas of Village Juhu, Taluka Andheri, Mumbai Suburban District situated at Juhu Gaothan Road No.2, 13, N.S.Road, J.V.P.D., Vile Parle (W), Mumbai – 400 049 and to inspect the nature of illegal and unauthorized constructions and file their report on record;”

3. Respondent Nos.3 and 4 / Plaintiffs instituted the Suit with the assertion that the Appellants are the trespassers in the suit land and have carried out unauthorized constructions sans the permission of the Municipal Corporation. In the said Suit, by way of Notice of Motion, the Respondent Nos.3 and 4 /Plaintiffs sought the aforesaid reliefs. By the impugned order, the learned Judge, City Civil Court was persuaded to make the Notice of Motion absolute in terms of prayer clauses (a) and (b). Simultaneously the learned Judge directed Defendant Nos.1 and 2 i.e. Municipal Corporation and the Assistant Municipal Commissioner to visit the suit premises and submit a report in terms of prayer clause (b) of the Notice of Motion.

4. The learned Counsel for the Appellants, apart from the other grounds of challenge to the impugned order, submits that Defendant Nos.1 and 2 in compliance with the aforesaid directions, visited the suit premises and prepared a report dated 27 January 2020. The Municipal Corporation found that there is an old ground storied structure at the suit site and no work of recent origin was found to have been carried out. The Report, a copy of which is tendered before the Court, reads as under :

“On inspection it is observed that there is old ground storied structure made

of B.M.Wall and A.C.Sheet roofing. At the time of inspection, no work found in progress or at recent origin. Photographs during site inspection is at page. No._____”

5. In view of the aforesaid report, propriety of continuing the interim order is required to be considered by the trial court. Hence, the Notice of Motion No.1646 of 2019 stands restored to file of the learned Judge, City Civil Court.
6. The learned Judge, City Civil Court shall decide the Notice of Motion afresh after providing an opportunity of hearing to the parties in the light of the report dated 27 January 2022.
7. Till the decision in the Notice of Motion, the interim relief granted in terms of prayer clause (a) shall continue to operate.
8. The learned Judge is requested to make an endeavour to expeditiously decide Notice of Motion No.1646 of 2019.
9. The Appeal stands disposed.
10. Interim Application, if any, also stands disposed.

(N.J.JAMADAR, J.)