

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 804 OF 2023
WITH
INTERIM APPLICATION NO.15693 OF 2023

Manoj Ramsanjeevan Dubey ...Appellant
Versus
The Municipal Corporation of
Greater Bombay Through Its N-ward and Anr. ...Respondents

...

Mr. S.S. Redekar, for Appellant.
Mr. R.Y. Sirsikar, for Respondent – MCGM.
Mr. Angaraj Ganpat Puri, Sub Engineer (Maintenance Dept.) N-Ward,
MCGM, present.

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CORAM : SANDEEP V. MARNE, J.
DATE : SEPTEMBER 27, 2023.

P.C.:

1. Admit. With the consent of learned counsels appearing for the parties, the Appeal is taken up for final disposal.
2. This Appeal is filed challenging order dated 16 September 2023 passed by the City Civil Court refusing to grant ad-interim relief in Draft Notice of Motion filed in L.C. Suit No.2198 of 2023. The suit has been filed by Appellant-Plaintiff challenging communication dated 28 March 2023 and order dated 12 September 2023.

3. It appears that earlier Appellant-Plaintiff had filed L.C. Suit No.1022 of 2006 seeking a restrain order against Municipal Corporation from demolishing the suit structure without following due process of law. During pendency of that suit, Notice under Section 314 of the Mumbai Municipal Corporation Act, 1888 was issued by the Municipal Corporation on 17 March 2016. On account of issuance of that notice, a statement was made on behalf of the Municipal Corporation on 23 March 2016 before the City Civil Court that the suit structure shall not be demolished without following due process of law and without passing final order in pursuance of that notice.

4. *Prima facie* it appears that the Municipal Corporation has not yet passed any final order in pursuance of notice dated 17 March 2016.

5. Mr. Sirsikar, the learned counsel appearing for Municipal Corporation would submit that the order passed on 12 September 2023 is the final order passed in pursuance of the Notice dated 17 March 2016. I am unable to agree. The order dated 12 September 2023 makes a reference to communication dated 28 March 2023, which in turn does not refer to the earlier Notice dated 17 March 2016 or to the order passed by the City Civil Court on 23 March 2016.

6. *Prima facie* therefore it appears that the Municipal Corporation has not passed any final order in pursuance of Notice dated 17 March 2016. In that view of the matter, *prima facie* case is made out for grant of ad-interim relief till decision of the Draft Notice of Motion.

7. Accordingly, the Appeal is allowed. The order dated 16 September 2023 passed by the City Civil Court in draft Notice of Motion refusing ad-interim relief is set aside. The Municipal Corporation is restrained from taking any action against suit structure in pursuance of notice dated 28 March 2023 or order dated 12 September 2023 till decision of the Draft Notice of Motion.

8. The City Civil Court is requested to make an endeavor to decide the Draft Notice of Motion as expeditiously as possible, preferably with a period of six months from today, without being influenced by any of the observations made in this order. The Municipal Corporation shall be at liberty to pass Order in pursuance of Notice dated 17 March 2016 after considering the documents produced by Appellant. In the event of passing such Order, the City Civil Court shall consider the effect of that Order while deciding the Motion.

9. Appeal is accordingly disposed of. Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)