

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 808 OF 2023
WITH
INTERIM APPLICATION NO.15739 OF 2023

Shree Swaminarayan Mandir-Borivali Trust ... Appellant

Versus

1. The Municipal Corporation of Greater Mumbai
2. Vorivali Vyomesh Co-operative Housing Society Ltd. ...Respondents

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Mr. Chirag Mody a/w Mr. Rishikesh Soni, Mr. Ashok Purohit, Ms. Nikita Lad i/by Ashok Purohit & Co. for Appellant.

Ms. Kalpana Trivedi a/w Mr. Jitendra P. for Respondent No.2.

Mr. K.H. Mastakar for Respondent No.1 – MCGM.

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CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 27, 2023.

P.C.:

1. By this Appeal, the Appellant-Trust challenges order dated 14 September 2023 passed by the City Civil Court rejecting Notice of Motion No.1666 of 2022 filed for grant of temporary injunction.

2. The Appellant-Trust had instituted L.C. Suit No.1211 of 2022 challenging notice dated 14/17 August 2021 issued by the Municipal Corporation under the provisions of Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**). The notice is in respect of

erection of unauthorized temporary shed on the terrace of the building using G.I. Sheet supported on M.S. Pipe admeasuring 9.50 m X 17.80 m with average height of 3 m.

3. Mr. Mody, the learned counsel appearing for Appellant-Trust would submit that the primary purpose for erection of temporary shed is to protect the building from leakages. He would submit that the shed has been in existence for the last several years and that the society has unnecessarily complained to the Municipal Corporation, which has led to issuance of notice dated 14/17 August 2021. He would further submit that the Appellant-Trust was protected by way of an ad-interim order dated 2 June 2022 which ought to have been continued by the City Civil Court till decision of the suit.

4. The learned counsel appearing for the Municipal-Corporation would oppose the Appeal and support the order passed by the City Civil Court.

5. The learned counsel appearing for Respondent No.2-Society would also oppose the Appeal submitting that the shed is not a temporary structure but a permanent one, where the Appellant-Trust has been operating kitchen on the terrace of the building. That the said terrace does not belong

exclusively to the Appellant-Trust and other members of the Society also have right to access the same.

6. After having heard the learned counsels appearing for the parties, it is seen that the impugned notice dated 14/17 August 2021 has been issued under the provisions of Section 55 of the MRTTP Act, which would show that the notice is in respect of a temporary structure. Therefore, the submission of the learned counsel for the Respondent No.2-Society that the structure is permanent one cannot be accepted. Mr. Mody, has contended that the purpose of erecting the temporary shed is to protect the Society from leakages. It thus appears that the Appellant-Trust has erected a whether shed for protection of the building during monsoon. However, such whether shed cannot be put permanently. Under the provisions of the Development Control Regulations, erection of weather shed is permissible during monsoon only for a specific period, after obtaining prior permission of the Municipal Corporation.

7. Considering this position, Mr. Mody would fairly submit that the Appellant-Trust would remove the temporary weather shed at the end of the monsoon by 15 November 2023 and shall apply to the Municipal Corporation either for regularization of the same or for issuance of permission for erection

of weather shed on the terrace of the building as and when required.

8. In view of the said statement made by the Mr. Mody, nothing will survive in the present Appeal and the same stands disposed of.

9. In view of disposal of Appeal, Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)