

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 948 OF 2023
IN
NOTICE OF MOTION NO. 3893 OF 2023
IN
B.C.C.C. S.C. SUIT NO. 2594 OF 2023
WITH
INTERIM APPLICATION (ST.) No. 31868 OF 2023

Smt. Kulsumbi Mohammeddin Malik

and anr.

...Appellants
(Orig. Plaintiffs)

V/s.

M.C.G.M. and anr.

....Respondents

Mr. D.Y. Chitnis a/w. Ms. Sonali Dalvi, Mr. Akhilesh Chitre, Mr. Rehan G. i/by. Ms. Sonali Dalvi, for the Appellants.

Mrs. Smita Tondwalkar, for B.M.C.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 November 2023.

P.C. :

1. By the present appeal, the Appellants challenge the Order, dated 6 November 2023, passed by the City Civil Court, refusing to grant *ad-interim* relief. Perusal of the Order dated 6 November 2023

passed by the City Civil Court would indicate that the suit structure is apparently assessed for municipal taxes in respect of area admeasuring 120 sq.mtrs. Mr. Chitnis, the learned counsel appearing for the Appellants draws attention to the assessment bill, which shows date of first assessment as 31 March 1961. The only reason why the learned Judge of the City Civil Court has refused to grant *ad-interim* relief is the variance in the area of the structure in tax assessment records of the Municipal Corporation and in the impugned Notice. The learned Judge has noticed that the area of the structure in the assessment records of the Municipal Corporation as 120 sq.mtrs whereas the area of the structure in the impugned Notice is 180 sq.mtrs. The Notice, however, contemplates demolition of the entire structure and not just the alleged addition in the area of the existing structure. In that view of the matter, the structure needs to be protected till the City Civil court applies its mind to all the relevant factors while deciding the Notice of Motion finally.

2. Accordingly, the order dated 6 November 2023, passed by the City Civil Court is set aside and the City Civil Court is requested to decide Notice of Motion No. 3893 of 2023 in an expeditious manner, preferably within a period of three months from today. Till the disposal of the Notice of Motion, the Municipal Corporation shall not act on the impugned Notice. With the above direction the Appeal from Order is **disposed of**.

2. With disposal of the Appeal, Interim Application filed for stay does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.

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