

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Appeal from Order No.84 of 2024

a/w

Interim Application No.889 of 2024

In

Appeal from Order No.84 of 2024

Alimullah Bande Hasan Khan Appellant.

Vs.

MCGM Respondent.

Dr Abhinav Chandrachud, Counsel a/w Ms Unnati Ghia i/b
Vijaykumar Kamble, for the appellant.

Miss Smita V. Tondwalkar for respondent/MCGM.

Coram : R. N. Laddha, J.

Date : 29 January 2024.

P.C. :

This appeal is listed today on account of a praipepe moved by the learned Counsel appearing for the appellant dated 23 January 2024 for urgent listing on the ground that the respondent/corporation sought to take action of demolition of the suit structure. Accordingly, at the request of the learned Counsel appearing on behalf of the appellant and in view of proposed demolition as per notice dated 4 December 2023, the matter is taken up for hearing.

2. Dr.Abhinav Chandrachud, the learned Counsel appearing on behalf of the appellant, submits that the appellant has received a notice dated 4 December 2023 issued by the respondent/corporation under Section 488 of the Mumbai Municipal Corporation Act, 1888 (for short 'the MMC Act'), whereby the Assistant Engineer (B & F) 'L' Ward, informed the plaintiff about his visit alongwith the workmen on 5 December 2023 and 21 December 2023 or any time thereafter to demolish the structure as per the notice issued by the respondent/corporation. The appellant replied to this notice, but the respondent/corporation did not consider it, nor did it consider the documents placed on record in its proper perspective. He submits that the predecessor-in-title of the plaintiff pursuant to an order dated 6 September 2012 passed by this Court in First Appeal No.209 of 2012, preferred a regularisation application before the respondent/corporation and the corporation was directed not to take any action and demolish the structure. This application is till date pending. He further states that whether the MCGM can demolish a structure by issuing notice under Section 488 of the Act is *sub-judice* before the Division Bench of this Court in ***Vasanti Vasant Gurav & Ors.Vs. Haresh M. Khudabadi & Ors.***¹ The learned Counsel submitted that the the learned trial Court without taking into consideration all these aspects, refused the ad-interim

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relief.

3. Mrs Smita Tondvalkar, the learned Counsel appearing on behalf of the respondent-corporation supports the line of reasoning adopted by the learned trial Court.

4. The present appeal is filed challenging order dated 22 December 2023 refusing ad-interim relief to the appellant/plaintiff in Notice of Motion No.4899 of 2023 in LC Suit No.3032 of 2023. The respondent/corporation is yet to file its reply to the Notice of Motion. Considering the nature of dispute involved in the present appeal, instead of determining the correctness of the impugned order, it would be appropriate for the learned City Civil Court to consider and decide the Notice of Motion No.4899 of 2023 in LC Suit No.3032 of 2023, finally.

5. The respondent/corporation shall file its reply to the Notice of Motion within three weeks from today in the trial Court. The appellant/plaintiff shall file a rejoinder, if any, within one week thereafter, with an advance copy to be served on the respondent/corporation. The trial Court is requested to expedite the hearing of the Notice of Motion and decide the same preferably within four weeks thereafter. Till disposal of the Notice of Motion, the parties shall maintain the *status-quo*.

6. Accordingly, the instant appeal from order stands disposed of. The pending application also stands disposed of. Needless to state that this Court has not examined the merits of the case and all contentions of the parties are left open.

[R. N. Laddha, J.]