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IN the HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.104 OF 2024
WITH
INTERIM APPLICATION NO.1205 OF 2024
IN
APPEAL FROM ORDER NO.104 OF 2024**

Nasrin Anis Ansari ...Appellant/Applicant

vs.

Municipal Corporation of Greater Mumbai ...Respondent

....

Mr. Akash Singh, for the Appellant.

Ms. Smita V. Tondwalkar, for the Respondent/BMC.

....

CORAM : R.N. LADDHA, J.

DATE : 5 FEBRUARY 2024

P.C. :

. This appeal is listed today in view of the praecipe moved by learned Counsel appearing for the appellant on 31 January 2024 for urgent listing on the ground that the Respondent Corporation seeks to demolish the suit structure. Accordingly, at the request of the learned Counsel appearing for the appellant, and in view of the proposed demolition, as per the notice, the appeal is taken up for hearing.

2. Mr. Akash Singh, learned Counsel appearing on behalf of

the appellant, submits that the Officers of the Respondent Corporation approached the appellant to demolish the suit structure situated at Govandi, Chembur, Ghatla Anand Nagar, Part-I, N.G. Acharya Marg, Chembur, Mumbai. The demolition was to be conducted as per the notice dated 14 November 2022 under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short, 'the MMC Act') and a speaking order dated 20 December 2022. The learned Counsel submits that the land, on which the suit premises is situated, is declared as a slum. Thus, the Respondent Corporation has no authority to demolish the structure in view of Section 3Z of the Maharashtra Slum (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'the Slum Act'). The Counsel makes a grievance that the learned trial court, however, without considering all these aspects, requested to grant ad-interim relief in favour of the appellant.

3. Ms. Smita V. Tondwalkar, the learned Counsel appearing on behalf of the Respondent Corporation, submits that the learned trial court has rightly refused to grant ad-interim in favour of the appellant. She further submits that the appellant cannot claim protection under the Slum Act by merely stating that the land on which the structure stands declared as a slum. The appellant has neither produced any document evidencing that the structure is censored under the Slum Act nor has placed on record a Slum Photo Pass Certificate issued by the competent authority.

4. The present appeal is filed challenging the order dated 20 January 2024 refusing ad-interim relief to the appellant/plaintiff in Notice of Motion No.158 of 2024 in Long Cause Suit No.179 of 2024. The record shows that the notice of motion is still pending before the trial court and, till date, no reply is filed by the Respondent Corporation. Considering the nature of the dispute involved in the present appeal, instead of determining the correctness of the impugned order, it would be appropriate that the learned trial court considers and decides Notice of Motion No.158 of 2024 in Long Cause Suit No.179 of 2024 finally.

5. The Respondent Corporation shall file its affidavit-in-reply to the notice of motion within two 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 other side. The trial court is requested to expedite the hearing of the notice of motion and decide it preferably within two weeks thereafter. Until the notice of motion is disposed of, the parties shall maintain the status-quo.

6. In view of this, the appeal stands disposed of. The pending application also stands disposed of. Needless to state that this Court has not examined the merits of the matter and all the contentions of the parties are left open.

(R.N. LADDHA, J.)