

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

Appeal from Order No.119 of 2024

a/w

Interim Application No.1428 of 2024

in

Appeal from Order No.119 of 2024

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Mr Shrinivas Soundra Pandian ... Appellant.

Versus

MCGM & Ors. ... Respondents.

Mr SK Dubey for appellant.

Ms Smita V. Tondwalkar for respondents No.1 and 2/BMC.

Mr Rajkumar Awasthi i/by Pragya Mishra for respondents
No.3 and 4.

Coram : R. N. Laddha, J.

Date : 9 February 2024.

P.C. :

This appeal is listed today in view of a praceipe moved by the learned Counsel appearing on behalf of the appellant on 8 February 2024 for urgent listing on the ground that the respondents sought to demolish the suit property and dispossess the appellant from it. Accordingly, at the request of the learned Counsel appearing for the appellant, this appeal is taken up for hearing.

2. Mr. SK Dubey, the learned Counsel appearing on behalf of the appellant, submits that the learned trial Court committed an error in refusing *ad-interim* relief in favour of the appellant. He submits that some of the heirs of the Late Irulundy Pandian have allegedly sold their undivided share in the larger property of suit property to respondents No.3 and 4. He alleges that respondents No.3 and 4 pressurized the appellant to sell his share to them. As a result, the appellant filed L.C.Suit No.1280 of 2023 before the learned City Civil Court, *inter alia*, to restrain the respondents from dispossessing the appellant, demolishing, or dealing with the suit property.

3. The learned Counsel submits that after filing the suit, the respondent/corporation issued a notice dated 15.1.2024 to the appellant directing him to demolish remaining portion of the structure which was earlier demolished on 10.10.2023, failing which the corporation would initiate appropriate action. He submits that the respondent/corporation purportedly issued this notice at the instance of respondents No.3 and 4 to dispossess the appellant. He makes a grievance that the learned trial Court, without considering all these aspects, refused to grant *ad-interim* relief in favour of the

appellant.

4. Mr Rajkumar Awasthi, the learned Counsel appearing on behalf of respondents No.3 and 4, submits that the appellant had filed a similar application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, before the learned trial Court. In that application, by an order dated 10.10.2023, the trial court refused to grant *ad-interim* relief in favour of the appellant. He submits that the present Notice of Motion No.513 of 2024 is barred by the principles of *res-judicata*. He further submits that the trial Court, after considering all these aspects, has rightly refused to grant *ad-interim* relief in favour of the appellant.

5. The present appeal is filed challenging the order dated 5.2.2024, refusing *ad-interim* relief to the appellant in Notice of Motion No.513 of 2024 in LC Suit No.1280 of 2023. The record shows that the notice of motion is still pending before the trial Court, and, to date, no detailed reply has been filed by the respondent/corporation. Considering the nature of the dispute involved in the present appeal, instead of determining correctness of the impugned order, it would be appropriate for the learned trial court to consider and decide

Notice of Motion No.513 of 2024 in LC Suit No.1280 of 2023 finally.

6. The respondent/corporation shall file its affidavit-in-reply to the notice of motion in the trial Court within two weeks from today, with an advance copy to be served on the other side. The trial Court is requested to expedite the hearing of the notice of motion and decide it preferably within two weeks thereafter. The learned Counsel for the parties state that they will not seek an adjournment and cooperate before the learned trial Court for the expeditious disposal of the notice of motion. The parties to maintain the *status-quo* until the notice of motion is disposed of.

7. Accordingly, the appeal stands disposed of. The pending application also stands disposed of. Needless to say this Court has not examined the merits of the matter and all contentions of the parties are left open.

[R. N. Laddha, J.]