

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 396 OF 2024

Ashwin Gada

...Appellant

Versus

M/s. Milan Associates and Ors.

...Respondents

Mr. Ram Upadhyay a/w. Mr. Anuj Pande i/b. Law Competere
Consultus, for Appellant.

None for Respondents.

CORAM : M.M. SATHAYE, J.

DATED : 27 MAY 2024

(VACATION COURT)

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P.C. :

1. Heard learned counsel for the Appellant. Perused record.
2. At the outset, learned counsel for the Appellant undertakes on instructions, that the Appellant will file necessary interim application in this Appeal from Order, seeking necessary interim prayers. He further undertakes on instructions, that the Appellant will file an amendment application in the Trial Court, for challenging the notice dated 07.04.24 issued by the Respondent- Kalyan Dombivali Municipal Corporation (for short 'KDMC') which is already mentioned in the prayer clause (b) of the plaint of Regular Civil Suit No. 187 of 2024, only as an interim prayer. It is asserted by the Appellant in prayer clause (b) of the plaint that the said notice is

received by the Appellant/Plaintiff through pasting on 07.05.24 though it is dated 07.04.24.

3. Inviting this Court's attention to section 268 of the Maharashtra Municipal Corporation Act, 1949, it is submitted that the said section does not empower the Municipal Corporation to demolish the subject matter structure, still the said notice proposes demolition. Urgent relief is therefore sought in respect of Appellant's subject matter shop Nos. 2 to 5 in Respondent No. 6 Society. It is urged that the Appellant's shops are part of the society to whom the notice is issued.

4. Inviting this Court's attention to para 28(ii) of the Judgment of this Court in Municipal Corporation of Greater Mumbai Vs. The State of Maharashtra (Writ Petition No. 1080 of 2015) with Notice of Motion No. 394 of 2017 (by Bai Velbai Velji Bhimji Charitable Trust) Order dated 28.02.2018, it is submitted that the Municipal Corporation is duty bound to act on its own policy guidelines while exercising power in respect of building falling in category 'C-1' which are either private or owned by Municipal Corporation. It is submitted that the policy guidelines (annexed at Exhibit-F) No.1.03, 1.04 and 1.15 are not followed in the present case and the Appellant's shops are about to be demolished. Learned counsel for the Appellant states that just after the suit was filed, another notice dated 07.05.24 is received by the Appellant (pasted), for the same purpose, with same assertions.

5. Perusal of the impugned order dated 22.05.24 shows that the

learned Trial Judge, after recording that the Municipal Corporation is served, has refused to grant ad-interim protection and has simply directed notices to be served upon the society and Municipal Corporation. Apparently in paragraph 2 of the impugned order, it is recorded that the KDMC is served and its advocate is also present. However, in paragraph 5 it is stated that unless Respondent-Corporation and society are served, interim relief cannot be granted. There is no clarity.

6. Perusal of the plaint paragraph No.6 shows that the structural certificate classifying the society building as 'C-1' is assailed on the ground that it is obtained by suppressing that society had undergone major repair work just 6 years ago. It is also averred that structural audit report does not disclose this fact.

7. Perusal of the notice dated 07.04.24 would show that the Respondent- Society is called upon to vacate subject matter property (society building) within 15 days and demolish it on its own expenses. It is further stated in the said notice that if it is not so complied with, then the society building will be vacated by using police force and then demolished.

8. *Prima facie*, the said notice dated 07.04.24 contemplates demolition which is not provided under section 268 of the Maharashtra Municipal Corporation Act (for short 'the said Act'). Therefore, considering the averments in the plaint, the provisions of section 268 of the said Act (under which the said notice is issued), the judgment relied upon and further considering that the learned

Trial Judge has neither granted *ad-interim* protection nor decided the matter, when the Corporation was duly served and its advocate was present, following order is passed :

- (A) Issue notice to the Respondents, returnable on **4 June 2024**. *Hum dast* permitted.
 - (B) By way of *ad-interim* relief until the next date, action contemplated under the notices dated 07.04.24 and 07.05.24 issued by Respondent No. 16 - KDMC is stayed, so far it relates to the Appellant's shops only. It is clarified that this order will not operate for the rest of the society building.
9. All concerned to act on authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)