

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 490 OF 2025
WITH
INTERIM APPLICATION NO. 11311 OF 2025

Blanch Miranda

Appellant

.. (Org. Plaintiff)

Versus

Brihanmumbai Mahanagar Palika

Respondent

.. (Org. Defendant)

.....

- Mr. Anil Sakhare, Senior Advocate a/w Mr. Amanjhot Anand i/by H.S. Anand, Advocate for Appellant
- Ms. Neeta Jadhav i/by Ms. Komal Punjabi, Advocates for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 11, 2025

P. C.:

1. Heard Mr. Sakhare, learned Senior Advocate for Appellant and Ms. Jadhav, learned Advocate for Respondent.

2. Present Appeal from Order (AO) challenges the ad-interim order dated 19.08.2025 passed by learned Trial Court in Draft Notice of Motion. Said Notice of Motion is nomenclatured as Notice of Motion No. 2320 of 2025. Impugned order is appended at page Nos. 39-47 of AO.

3. Mr. Sakhare, learned Senior Advocate would contend that case of Plaintiff is that their structure is existing in Gaothan area and it was constructed prior to the datum line of 1961-1962 despite which Notice

under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "**the said Act**") was issued, *inter alia*, for demolition of the entire structure necessitating the Plaintiff to rush to Court for seeking relief. In the course of his submissions, he would also point out that the policy set out by the Supreme Court under Article 142 of the Constitution of India in respect of determination of validity and legality of structures existing prior to datum line has not been followed by the Corporation before issuance of notice including contents of the Corporation's own Circular dated 24.04.2025 by issuing the impugned notice and also while passing the speaking order. He would submit that considering the Notice of Motion being pending before the learned Trial Court, appropriate directions be passed by Court to decide the said Notice of Motion in accordance with law.

4. Ms. Jadhav, learned Advocate appears for Corporation. She would submit that the reasons given in the impugned order refusing ad-interim relief be *prima facie* considered by Court. Be that as it may, this Court cannot be a fact finding Court in the first instance especially when substantive Suit has been filed by Plaintiff to challenge the impugned notice of demolition and there is a speaking order of demolition passed by Corporation. Therefore in my opinion the right course of action would be to direct the learned Trial Court to dispose of Notice of Motion No. 2920 of 2025 within a time bound

programme after hearing both the parties strictly in accordance with law. Needless to state that case of Plaintiff and Corporation shall be considered by the learned Trial Court on the basis of material placed before the Trial Court in accordance with law.

5. Learned Trial Court is directed to determine and decide Notice of Motion No. 2920 of 2025 on or before 31.12.2025. Parties are directed to file their pleadings and documents before the Trial Court and if they desire to file further pleadings, same are permitted to be filed.

6. Needless to state that ad-interim order granted in the present AO on 25.08.2025 shall stand extended upto 31.12.2025 and thereafter for a further period of two weeks if the order passed in the Notice of Motion is adverse to the Plaintiff.

7. In view of the above observations and directions, Appeal from Order is disposed. Interim Application is also disposed.

[MILIND N. JADHAV, J.]

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