

Dik / Nitin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 100 OF 2017

Indu Sarathi Developers ...Petitioner.
vs
The Municipal Corp. of Gr. Mumbai & Ors. ...Respondents

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Mr. A.R.Shaikh for the Petitioner
Mr. Ashwin Sakolkar a/w Ms. Rupali Adhate & Ms. Yamuna Parekh for the
Respondent/ M.C.G.M.
Mr. Tanaji Rupnar, AE (B & F) R/S Ward from M.C.G.M. present.

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**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED 05 DECEMBER, 2019.**

P.C. :

1. The Petitioner seeks the following relief in the above Writ Petition :

“(a) *to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent Nos.1 and 2 to forthwith to demolish the unauthorized construction of structure with brick masonry wall, with G.I. Sheet/ A.C. Sheet roof admeasuring 20’x40’ with the support of M.S.Angles on my property being Survey No. 65, Hissa No.7, corresponding to C.T.S. No. 561, admeasuring 2624.60 sq.mtrs of Kandivali Village, Taluka Borivali, Mumbai Sub-urban district.”*

2. On 6th June, 2017 the Division Bench of this Court (Coram : A.S.Oka and Smt. Vibha Kankanwadi, JJ.) passed the following order.

“1. *Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 and 2. Issue notice to the respondent No.3 returnable on 25th July, 2017.*

2. *We direct the respondent No.2 to immediately visit the subject property for ascertaining whether illegal construction as alleged by the petitioner has been carried out. If the respondent No.2 finds that illegal construction has been carried out, he shall forthwith take steps for demolition of the illegal construction in accordance with law.*
3. *We make it clear that action of demolition shall not be taken without notice to the respondent No.3.”*

3 Pursuant to the above order, the Municipal Corporation after confirming that the structures put up by Respondent No.3 were illegal, issued notice to Respondent No.3. Respondent No.3 immediately moved the City Civil Court, Dindoshi and obtained an ad-interim order dated 13th July, 2017 restraining the Corporation from taking action on the notice, which Order is reproduced hereunder :

“Advocate N.B.Shukla for plaintiff present. Advocate Botlawar for defendant / MMC present. Mrs.Komal Bhoi, Junior Engineer attached to R/South Ward present. FRSR the following order is passed :

ORDER

The structure bearing census No. RXC 37-1/1 to the extent of 55 x 65 ft. approximately and mezzanine floor admeasuring 55 x 65 ft. by excluding the developed area which is covered under road is protected i.e. defendant is directed not to demolish the same till next date. Adjourned for N/M reply to 31/8/2017.”

4. It is clear from the above Order that the City Civil Court has granted

injunction against the Corporation without going into the merits of the case. Since more than two years, the injunction order, which is not passed on merits, has continued against the Corporation and the Notice of Motion has not been taken up for hearing.

5. We have in most of the matters before us noted that , as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions. Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any action because of the ad-interim order passed by the City Civil Court. This *modus operandi* cannot continue. A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue for an indefinite period but the matters pertaining to unauthorized constructions where such exparte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest.

6. The learned Judge of the City Civil Court, Dindoshi to whom the above Notice of Motion taken out in L.C. Suit No. 1979 of 2017 is assigned, should hear the Notice of Motion within a period of two weeks from today and pass appropriate orders. Both the parties shall appear before the Principal Judge, City Civil Court, Dindoshi on 9th December, 2019 at 11.00 a.m., produce this order and seek necessary directions.

7. All parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

8. Stand over to 19th December, 2019 “**High on Board**”.

9. A copy of this Order shall be forwarded to the Guardian Judges of the City Civil Court, Mumbai by the Prothonotary and Senior Master of this Court.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)