

Ghuge

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

FIRST APPEAL NO. 1196 OF 2009

Sakinabi Mohamed Ashiq and Ors	... Appellants
V/s.	
Brihanmumbai Municipal Corporation and Ors	... Respondents

**WITH
CIVIL APPLICATION NO.1702 OF 2018
IN
FIRST APPEAL NO. 1196 OF 2009**

Sakinabi Mohamed Ashiq and Ors	... Applicants
In the matter between :-	
Sakinabi Mohamed Ashiq and Ors	... Appellants
V/s.	
Brihanmumbai Municipal Corporation and Ors	... Respondents

Ms. Panthi Desai i/b M.P. & Associates for the appellants.

Mr. Santosh Parad for respondent/MCGM.

Mr. Drupad Patil a/w Mahesh Mishra i/b Zakir Basha for respondent Nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2023

P.C.:

1. The appellant is original plaintiff who had filed the suit seeking injunction against the Municipal Corporation not to demolish the suit premises without following the due process. The said suit was dismissed, against which the plaintiffs have filed

present appeal which has been admitted by this Court.

2. During the pendency of the present appeal, Municipal Corporation has issued notice under Section 55 Maharashtra Regional Town Planning Act, 1966. The appellants have filed application seeking reliefs in relation to notice under Section 55 of Maharashtra Regional Town Planning Act, 1966. During the course of hearing of the said application, the plaintiffs have filed suit challenging notice issued under Section 55 of the Maharashtra Regional Town Planning Act, 1966. In view of issuance of notice under Section 55 of Maharashtra Regional Town Planning Act, 1966 nothing remains to be adjudicated in the appeal as issuance of notice under Section 55 of Maharashtra Regional Town Planning Act, 1966 amounts to following due process by Municipal Corporation.

3. In that view of the matter, the First Appeal becomes infructuous. However, it is made clear that rights of the plaintiffs to be agitated in the suit challenging notice under Section 55 of the Maharashtra Regional Town Planning Act, 1966 are kept open. The appropriate proceedings shall be decided by the appropriate Courts in accordance with law.

4. The First Appeal stands disposed of in the above terms. No costs.

5. In view of dismissal of the First Appeal, the Interim Application does not survive and is disposed of accordingly.

(AMIT BORKAR, J.)