

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 907 OF 2022
WITH
INTERIM APPLICATION NO. 18209 OF 2022

Jayashree Prakash Mahadik & Ors. ...Appellants/Applicants
Versus
Om Prakash Gupta & Anr. ...Respondents

a/w.

APPEAL FROM ORDER NO. 913 OF 2022
WITH
INTERIM APPLICATION NO. 18251 OF 2022

Shakuntala Nandkumar Sangolkar & Ors. ...Appellants/Applicants
Versus
Om Prakash Gupta & Anr. ...Respondents

a/w.

APPEAL FROM ORDER NO. 914 OF 2022
WITH
INTERIM APPLICATION NO. 18265 OF 2022

Varad Rajesh Kothari & Ors. ...Appellants/Applicants
Versus
Om Prakash Gupta & Anr. ...Respondents

Ms. Bhagyashri Mangale i/b. Mr. Jating S. Jamkhandi for the
appellants/applicants.

Mr. Narendra V. Walawalkar, Senior Advocate a/w. Ms. Smita
Tondwalkar for the respondent/MCGM.

Mr. Narayan Mathakar, Rent Supervisor M/E Ward present.

CORAM: G. S. KULKARNI, J.
DATED: 14 February, 2023

ORAL ORDER

1. The order impugned in these appeals is an order dated 27 July, 2020
passed by the learned Judge, City Civil Court at Bombay whereby Notice of

Motion No. 1766 of 2022 filed by the appellant/plaintiff in L.C. Suit No. 1138 of 2022 has been rejected.

2. Perusal of the record indicates that there was no ad-interim protection granted by this Court till date. When the proceedings were heard by this Court on 13 February, 2023 (yesterday) on urgent mentioning, the matter was adjourned for today to enable the learned advocate for the Municipal Corporation to take instructions.

3. I have heard Ms. Mangale, learned counsel for the appellants and Mr. Walawalkar, learned senior counsel along with Ms. Tondwalkar for the Municipal Corporation.

4. At the outset, it needs to be observed that the appellants/plaintiffs under the garb that they are project affected persons, are occupying tenements in question relying on allotment letters alleged to be issued by the Municipal Corporation. The Municipal Corporation had categorically contended that the allotment letters and possession receipts produced by the appellants/plaintiffs were bogus and fabricated. The learned trial Judge on the materials as placed on record, has observed that such allotment letters are forged and fabricated documents. It is observed that the Assistant Engineer “E” Ward, at no time had issued such possession letters to the appellants, on the basis of which the

appellants/plaintiffs claimed to be in the occupation of the project affected persons (PAP) tenements. It is on the basis of such bogus documents, the appellants/plaintiffs had initially obtained an ex-parte ad-interim injunction against the municipal corporation without proper service of the proceedings on the municipal corporation. This apart, the suit in question came to be filed not assailing the action on the part of the municipal corporation of any notice being issued under section 314 of the Municipal Corporation Act, but on purported oral threats. This assumes significance, as one of the observations as made in the impugned order, in my opinion, is quite serious, from which it *prima facie* appears that the officers of the municipal corporation are also misusing their position and/or are not appropriately controlling the fact-situation. The said observation reads thus:

“12. It is contention of the corporation that premises in Building No. 37 in Eversmile construction building has not been handed over to the Corporation for the purpose of project affected persons.”

5. Hence, what is disturbing is that not only there were tenements which may possibly be tenements which were under the control and authority of the municipal corporation, but there are certain other tenements, which ought to come to the municipal corporation and before they are so handed over to the municipal corporation, the same are being illegally dealt/allotted, when in fact they need to be in the pool of the municipal corporation. All these incidents depicts a sorry state of affairs, namely, as to how the municipal corporation could

not be vigilant and permit illegal occupation of its tenements by such persons like the appellants/plaintiffs, who are in occupation of the premises, on forged and fabricated documents, and further, as to why timely steps were not taken by the municipal corporation in a manner known to law, to evict them/remedy the situation, more particularly, when such incidents are not new to the municipal corporation and its officers. Also in the past, similar illegalities had occurred with PAP tenements in control of the municipal corporation, were occupied illegally and on false documents, when the proceedings had reached this Court. Such incidents/illegality amounts to nothing but usurpation of public largesse in a manner contrary to law.

6. Mr. Walawalkar, in fairness, has drawn the Court's attention to an order dated 5 May, 2017 in **Jayprakash Patru Chouhan & Ors. vs. Municipal Corporation of Greater Mumbai & Anr.**¹ passed by a co-ordinate Bench of this Court in a batch of Appeals from Order. The situation before the Court was identical as in the present case. This Court had taken a serious view of the proceedings in observing that the persons similar to the one's placed like the appellants/plaintiffs, do not have any legal rights whatsoever to seek any relief or injunction, as they were trespassers in possession. The following observations are required to be noted, which reads thus:

"8. At this stage, one more disturbing aspect of the case needs to be noted. All eight suits are filed through their constituted attorneys, namely, one Shiva Rajaram Patil, one Manoj Rajaram Patil and one Samir Shaikh, in whose favour

1 Appeal from Order no. 1186 of 2013 along with connected appeals

powers of attorney are executed by the Plaintiffs just prior to the filing of these suits. The powers of attorney contain extensive powers, including power to dispose of the tenements to third party purchasers. Apprehending the proxy nature of these suits, this Court, by its interim order dated 6 February 2017, called upon the Plaintiffs to file their individual affidavits sworn before the competent officer of the Registry of this Court. Despite giving them time to comply with this order, out of 82 Plaintiffs only 65 have filed individual affidavits. Seventeen Plaintiffs, who are listed matter-wise in the order of this Court passed on 29 March 2017, have not filed any affidavits. In fact, on that day, i.e. 29 March 2017, a statement was made on behalf of the Plaintiffs, that they would take steps to delete these seventeen Plaintiffs in the respective suits. No application, though, is moved as of date to do so. It can, in the premises, straightaway be presumed that these seventeen Plaintiffs are not genuine occupants who will need any protection. Even as regards the rest, there is no explanation as to why such extensive powers are given to the constituted attorney, including the power of sale.

11. In any event, in a case like this, mere possession is no answer to the claim of eviction by the State authorities. The possession in the present case cannot be traced to any lawful authority. There is no legitimate documentary evidence produced before the Court to show either the Plaintiffs entitlement as project affected persons or allotment to them of the suit tenements as such project affected persons. In the absence of such record, the Plaintiffs possession, even if there be any, can merely be termed as possession of trespassers. Besides, there is no case of a settled possession of a sufficient length of time. There is no record to that effect. There is no question, therefore, of applying the rule of due process of law before evicting the Plaintiffs merely on the basis of their possession.

12. In any event, as held by the Supreme Court in the case of Maria Margarida Sequeira Fernandes vs. Erasmo Jack de Sequeira, the present suits by the Plaintiffs can very well be treated as recourse to that due process of law. The Plaintiffs having failed to lawful authority to retain possession of the suit premises or any right to hold on to such possession, the requirements of due process are clearly satisfied in the present case so as to enable the State to evict the Plaintiffs. Due process, as held by the Supreme Court, includes an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Such due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. The plaintiffs having approached a competent court of law seeking a protective remedy, such as injunction, and having failed to set up a good case, cannot be heard to say that due process of law must still be operated before the other party can be allowed to enforce its rights by recovering possession of disputed premises."

(emphasis supplied)

7. Learned counsel for the appellants/plaintiffs realizing that her clients have no legal rights in respect of the tenements would submit that the appellants/plaintiffs would vacate the tenements and handover possession of their respective tenements to the Administrative Officer of the municipal corporation. She prays for eight weeks time for the appellants/plaintiffs to vacate.

8. In the facts of the case, such period as prayed for is unreasonable. The appellants/plaintiffs are directed to handover the possession of the premises within six weeks from today. There shall not be any further extension in this regard under any circumstances. In the event, the possession is not handed over to the Administrative Officer, the Court Receiver, High Court, Mumbai shall stand appointed to take over the possession of the premises from the appellants/plaintiffs. Further, police assistance can be made available from the local police station. The Court Receiver to take possession of the premises and hand it over to the Administrative Officer of the Municipal Corporation. It shall be entirely at the cost and consequence of the appellants/plaintiffs. Ordered accordingly.

9. Be that as it may, the proceedings ought not to stop at this more particularly, considering the repeated episodes of such nature reaching this Court, i.e., persons on false and fabricated documents without authority usurping, entering, occupying and possessing the premises/tenements of the municipal corporation. Insofar as the PAP tenements are concerned, they are supposed to be

allotted to the Project Affected Persons, in the city of Mumbai. Mr. Walawalkar points out that there is a long list of genuine and bonafide 'project affected persons', who stand deprived of their legitimate entitlement to have such tenements, as persons like the appellants, without any lawful allotment of such tenements in their favour, occupy such tenements, to the deprivation of the deserving/genuine persons. Mr. Walawalkar has pointed out that all this leads to unwarranted legal actions and litigation. He would submit that this cannot be a routine affair. He has fairly stated that he has come across atleast five cases of such nature. As an officer of the Court, he would urge that a serious view of such illegality is required to be taken and appropriate directions for a remedial mechanism in that regard can be put in place. In my opinion, the concerns as raised by Mr. Walawalkar are certainly in public interest, the municipal corporation would intend to pursue, as also in the larger interest of persons who are supposed to lawfully occupy the municipal corporation's premises/property, and when it concerns PAP's, the bonafide allottees of PAP tenements, who await allotment of tenements.

10. The issues being canvassed by Mr. Walawalkar, certainly being serious, the first and foremost issue which would immediately come to one's mind is as to why the Municipal Commissioner and his machinery is not in a position to take appropriate measures to safeguard the municipal property/tenements/structures and remedy any illegality in regard to any unauthorized occupation and/or

encroachment, misuse etc. It appears that there is no vigil and accountability when incidents of such nature of usurping the property of municipal corporation takes place. Certainly it is not necessary that all these matters should come to the Court. It is for this reason, the Municipal Commissioner is required to put in place a robust mechanism so that there is accountability not only in regard to allotment and occupation of municipal tenements of all categories but also prompt actions to be taken as per law, against those persons who are illegally occupying such tenements, so that by a timely action they are evicted from the tenements, if they are in unauthorized and illegal occupation of such tenements and/or have encroached upon the premises of the Corporation as observed by the co-ordinate Bench of this Bench, as noted above.

11. In my opinion, public interest would warrant that to control such situations, the Municipal Commissioner shall constitute a “Special Cell” which would be headed by an Additional Municipal Commissioner with two other competent officers, as may be appointed by the Municipal Commissioner, which shall be in-charge of allotment, administration, management and maintenance of all the tenements of the Municipal Corporation. The Special Cell shall from time to time take appropriate action not only in regard to the allotment of tenements to the PAP but also in regard to eviction of persons who are illegally occupying such premises/tenements and those who have continued to occupy the tenements after the licence to occupy the same has expired. It cannot be countenanced that

once persons enter such tenements, as limited licensee's, no action would be taken by the Municipal Corporation to evict them and/or that they may continue to remain in occupation of their tenements to the deprivation of others for years together. If such inaction on the part of the municipal corporation is permitted to continue, then certainly it would amount to gross illegality and the Municipal Corporation and its machinery, would be acting contrary to public interest. However, this may be barring exceptions wherein under any written policy of the municipal corporation which is as per law would permit such person to occupy the municipal tenement for a long period or in perpetuity.

12. The Municipal Commissioner shall accordingly constitute a 'Special Cell' as noted above, within a period of four weeks from today, which shall take stock of all the tenements including PAP tenements belonging to Municipal Corporation. It is clarified that in the event any illegality is noticed by the Special Cell, it would be the duty and responsibility of the Special Cell to take appropriate action in the event illegalities are noticed. The Special Cell shall be empowered to fix accountability in respect of any illegality including on the part of municipal officers. This would be in consonance with the directions of the Division Bench of this Court in **High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation & Ors.**² which has emphasized that the Municipal Officers although have

substantial powers and authority, however, they are accompanied with onerous public duties to be exercised in public interest. The Municipal Commissioner shall accordingly from time to time take a monthly review of the working of such “Special Cell” as may be constituted and issue appropriate directions for the effective and smooth functioning of such Special Cell, so as to safeguard all the municipal properties. The Court appreciates the stand taken by Mr. Walawalkar on such issues which are in the larger benefit of the municipal corporation.

13. Before parting, considering the serious observations as made by the learned trial Judge in the impugned order, regarding false and fabricated documents, on the basis of which the appellants/plaintiffs having encroached and/or usurped the public property, this would also certainly call for a criminal action to be initiated, if there is any criminality in any of the actions of the appellants/plaintiffs. Thus, as rightly suggested on behalf of the municipal corporation, the present order would not preclude the municipal corporation from initiating proceedings under criminal law. All contentions in that regard are expressly kept open.

14. One more glaring aspect which is required to be considered by the Court is the manner and method by which the suit in question came to be filed by the appellants/plaintiffs in the City Civil Court and that too on forged and fabricated documents. Mr. Walawalkar has pointed out the verification clause of the plaint, to state that one Smt. Sushma Ganesh Lokare, stated to be the Constituted Attorney of the plaintiffs has verified the contents of the plaint. She has also

signed the Vakalatnama in favour of the appellants/plaintiffs before the City Civil Court while filing the suit. Perusal of the documents which are annexed to the plaint would not show any Power of Attorney as per the requirement of law, having been granted by the eighteen plaintiffs to the said constituted attorney. It appears that this aspect was not examined by the learned trial Judge. Filing of such defective and/or misleading suit was also an issue before this Court in *Jayprakash Patru Chouhan & Ors.* (supra). Mr. Walawalkar is right in contending that in fact in filing of such false proceedings and that too which was intended to mislead the Court, would amount not only to an abuse of the process of law, but also, interference by the appellants/plaintiffs in the administration of justice, requiring an action to be taken against the appellants/plaintiffs of Contempt of Court Act. In my opinion, looking at the nature of the plaint and other aspects as discussed above, an enquiry in this regard is required to be undertaken by the Trial Court. The learned trial Judge shall accordingly examine the plaint and the documents and after giving opportunity to the parties, record its finding as to whether the conduct of the appellants/plaintiffs amounted to any interference in the administration of justice. If the learned trial Judge is satisfied on any such act on the part of the plaintiffs, in that event the learned trial Judge shall take appropriate steps as may be permissible in law for further proceedings to be initiated against the appellants for having committed Contempt of Court. In such context, the plaintiffs are directed to appear before the learned trial Judge on 6 March, 2023 with a copy of this order.

15. It is clarified that in the event, the plaintiffs are not represented, it will be open to the learned trial Judge to pass such appropriate orders so as to secure the appearance of the appellants/plaintiffs before the Court in a manner known to law and to proceed against them in accordance with law. This is to ensure that the orders of this Court are taken to the logical conclusion and are not defeated by the absence of appellants/plaintiffs before the Court.

16. As there are certain issues in regard to the Power of Attorney as issued by the plaintiffs in favour of one Sushma Ganesh Lokare, a copy of which is placed at page 265 of the Paper book dated 17 March, 2022 and as seen from the notary stamp signed by the Notary on 14 April, 2022, the Advocate for the plaintiffs Mr. Jating S. Jamkhandi is directed to furnish inspection of the original Power of Attorney Holder to the advocate/Law Officer of the Municipal Corporation, as also place the same for perusal of the learned trial Judge when the parties next appear before the trial Judge. The learned Trial Judge to take appropriate view of the matter after examining the documents.

17. Disposed of in the above terms.

18. To report compliance, stand over to 13 March, 2023.

19. In view of disposal of Appeals from Order, Interim Applications do not survive. It is accordingly disposed of.

G. S. KULKARNI, J