

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 749 OF 2015
WITH
CIVIL APPLICATION NO. 907 OF 2015

Mrs. Nanda Dashrath Marne .. Appellant
vs
Municipal Corporation of Greater Mumbai & Ors. .. Respondents

Mr. R.P. Ojha for the appellant.
Mr. A.V. Diwate for respondent nos.1 and 2.
Mr. S.P. Thorat for respondent no.3.

CORAM: R.D. DHANUKA, J.

DATE : 14TH DECEMBER 2015

P.C.:

1. By this Appeal from Order, the appellant has impugned the order dated 9th June 2015 passed by the learned Trial Judge refusing to grant ad-interim relief in favour of the appellant (original plaintiff).

2. Learned counsel for the appellant invited my attention to the Minutes of the Meeting dated 30th June 1979 which was alleged to have been attended by the then Mayor of the Mumbai Municipal Corporation and the Deputy Municipal Commissioner, in which the decision was alleged to have been taken that certain stalls are to be erected in Housing Board Colonies, Municipal Colonies, Slum Areas,

etc. and if necessary on the footpaths. Learned counsel for the appellant submits that in view of the decision taken in the said meeting, respondent no.2 was permitted to erect stalls on the footpath and the appellant has been allotted a stall and has been operating and paying rent to respondent no.2 – Maharashtra State Co-operative Marketing Federation, who in turn has been paying rent to MHADA. Learned counsel for the appellant submits that since last several decades, the said stall, which was allotted to the appellant, has been in existence.

3. None of the respondents have filed any affidavit in reply before the learned Trial Judge. The respondents herein will have to explain before the learned Trial Judge as to how the stall was allotted to the appellant and whether such stall constructed by respondent no.2 – Federation was subject to the provisions of Mumbai Municipal Corporation Act or not. Since the stall in question is in existence for quite some time, in my view, interests of justice would be met with if the ad-interim relief in terms of prayer clause (a) of the notice of motion filed by the appellant is granted. Hence, I pass the following order:

ORDER

- (i) The respondents are directed to file affidavit in reply within 2 weeks before the learned Trial Judge and serve copy thereof on the appellant's advocate simultaneously.

- (ii) The learned Trial Judge shall dispose of the notice of motion within 3 months from the date of the respondents filing affidavit in reply and shall decide the matter without being influenced by the observations made by the learned Trial Judge in the impugned order.
- (iii) It is made clear that the appellant shall not carry out any further construction or extend the area of the stall during the pendency of the notice of motion.
- (iv) There shall be ad-interim relief in terms of prayer (a) of the Notice of Motion before the learned Trial Judge during the pendency of the said Notice of Motion.
- (v) Appeal from Order is disposed of in the aforesaid terms with no order as to costs.
- (vi) In view of disposal of the Appeal from Order, the Civil Application does not survive and is disposed of.

(R.D. DHANUKA, J.)