

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

**APPEAL FROM ORDER NO.845 OF 2014
WITH
CIVIL APPLICATION NO.1023 OF 2014
IN
APPEAL FROM ORDER NO.845 OF 2014**

Mrs.Suvidha Laxman Mhadgut .. Appellant

Vs.

Maharashtra Housing Area and
Development Board and Ors. .. Respondents

Mr.G.N.Salunkhe i/b Mr.A.M.Rajgole for the appellant
Mr.S.P. Thorat for the respondent no.1
Mr.S.G.Karandikar for the respondent no.3

**CORAM : K.K.TATED, J.
DATED : 12th JANUARY, 2015**

PC:

1 By this Appeal from Order, the appellant original plaintiff challenges the oral order dt.20th June, 2014 passed by Bombay City Civil Court at Bombay declining to grant ad interim relief restraining the respondents from dispossessing and or demolishing the suit structure i.e. Milk Centre standing upon area of land admeasuring 10' x 5' sq. feet at city survey no.386, Mulund (East), Mumbai adjacent to two buildings 19 and 20 of defendant no.2.

2 Respondent no.1, Maharashtra Housing Area and Development Board is defendant no.1. Respondent no.2, Co-operative Housing

Society is original defendant no.2 whereas Respondent No.3, Developer of property is defendant no.3.

3 Admitted facts of the matter are as under:

Respondent no.1 MHADA vide its resolution no.5917 dated 10th May, 2003 decided to grant on temporary basis / Leave and Licence basis to use the piece of land admeasuring 10' x 5' sq. feet to the appellant. Accordingly MHADA allowed the appellant to construct wooden booth for carrying on milk business centre on Leave and Licence basis. At that time, appellant executed undertaking dated 8th August, 2003 admitting that same was allowed for a period of one year without any right, title and interest in the land. MHADA by their letter cum notice dated 11th February, 2014 called upon the appellant to hand over vacant and peaceful possession of the suit land by shifting milk centre to some other place. Hence, the appellant filed S.C.Suit No.1581 of 2014 in the Bombay City Civil Court at Bombay for declaration that she is lawful tenant/occupier of suit land and injunction restraining the respondents from disturbing her possession of the suit land without following due process of law. Following are the prayer clauses in the said suit:

“(a) That this Hon'ble Court be pleased to declare that the Plaintiff is the lawful tenant / occupier of the Suit Premises in respect of suit premises i.e. wooden stall i.e. Milk centre stand on area of land admeasuring 10' x 5' sq.feet or thereabout situated at city survey no.386 (part) of village Mulund

(East), Mumbai adjacent to Building No.19 and 20.

(b) That in the alternative, defendants be directed to provide to the plaintiff permanent alternate accommodation, with the benefits of temporary alternate accommodation in lieu of suit premises with all other benefits received and have already agreed to be received by tenants/members/occupiers of the defendants no.1 and 2, which defendant no.3 should be admitted and provided to the Plaintiff in lieu of the suit premises.

c) That this Hon'ble court be pleased to pass permanent order and injunction restraining the Defendants, their servants, agents, and hirelings and/or any persons claiming through them shall not dispossess, demolish or interfere with the possession of plaintiff except by due process of law, in respect of the suit premises i.e. Milk centre stand on area of land admeasuring 10' x 5' sq.feet or thereabout situated at city survey no.386 (part) of village Mulund (East), Mumbai, adjacent to Building no.19 and 20 of the defendant no.2.

d) Pending the hearing and final disposal of the present suit, his Hon'ble court be pleased to pass an order and injunction restraining the Defendants, their

servants, agents, hirelings and/or any persons claim through them shall not dispossess or interfere with the possession of Plaintiff except by due process of law, in respect of suit premises i.e. Milk centre stand on area of land admeasuring 10' x 5' sq.feet or thereabout situated at city survey no.386 (part) of village Mulund (East), Mumbai, adjacent to Building no.19 and 20 of the defendant no.2.

e) Ad interim reliefs in terms of prayer clause (c) above be granted.

f) Cost of the suit be provided for.

g) Any other relief as the nature of the case allows and this Hon'ble Court deems fit and proper be allowed.”

4 In that suit, the appellant preferred Notice of Motion No.2320 of 2014 for temporary injunction. The trial court by its order dated 20th June, 2014 held that appellant has no right, title and interest in the suit premises. The trial court held that the period of leave and licence was only for one year i.e. upto 4th August, 2004. The trial court also held that the appellant gave an undertaking dated 8th August, 2003 that she would vacate the suit premises after one year. Hence, on the basis of these facts, the trial court rejected the appellant's prayer for ad interim relief. Hence, the present Appeal

from Order.

5 The learned counsel for the appellant submits that the MHADA by its resolution no.5917 dated 10th May, 2003 granted permission to the appellant to install wooden stall to carry her business of Mill Centre. He submits that it is specifically stated in the said resolution that the said permission can be extended for further period. He submits that since then, the appellant is in possession of the said land and paying the rent as per Resolution No.5917 dated 10th May, 2003.

6 The learned counsel for the appellant submits that the appellant paid the rent to MHADA upto March, 2014. In support of that, he relies on the receipt issued by the Mumbai Griha Nirman & Area Development Board bearing No. 7612 dated 6th August, 2013. He further submits that for the last more than 10 years she is in possession of the suit land and therefore, respondents have no right to disturb her possession without following due process of law.

7 The learned counsel for the appellant further submits that the respondent no.1 MHADA is taking action at the instance of respondent no.2 and 3. He submits that though MHADA issued notice dated 11th February, 2014 calling upon the appellant to hand over vacant and peaceful possession of the suit land, they failed and neglected to follow due process of law. He relies on the Apex Court decision in the matter of *Rame Gowda (Dead) by Lrs. vs. M.Varadappa Naidu (Dead) by LRs. and Another*¹. The Apex Court held that if a person is in settled possession of property then, he

1 (2004) 1 SCC 769

cannot be dispossessed without following due process of law. On the basis of this submissions and the authority in the matter of Rame Gowda (Dead) by Lrs. vs. M.Varadappa Naidu (Dead) by LRs. and Another (Supra), the learned counsel for the appellant submits that this Honourable Court be pleased to restrain the respondents from dispossessing the appellant from the suit property without following due process of law till the hearing and final disposal of S.C.Suit No.1581 of 2014 and or Notice of Motion No.2320 of 2014. He submits that if the protection is not granted, irreparable loss and injury will be caused to the appellant. He submits that the appellant has good chance of success in S.C.Suit No.1581 of 2014.

8 On the other hand, the learned counsel for the respondent no.1 MHADA vehemently opposed the present Appeal from Order. He submits that the trial court in its order dt.20th June, 2014 considered all the facts of the present case. He submits that the trial court specifically held that the appellant was allowed to keep her wooden booth for selling milk for a period of one year as per resolution number 5917 dated 10th May, 2003. He further submits that the trial court also considered that the appellant gave an undertaking dated 8th August, 2003 stating that the respondent no.1 allowed the appellant to keep wooden booth for selling milk for a period of one year only without creating any right, title and interest in the suit property.

9 The learned counsel for the respondent no.1 submits that MHADA granted leave and licence only for one year. That time

expired on 4th August, 2004. Thereafter MHADA never extended the period in favour of the appellant. Therefore, there is no question of granting any injunction against the respondents from disturbing the appellant's possession in respect of the suit land. He further submits that after expiry of period from 4th August, 2004, the appellant is occupying the said land unauthorisedly. He submits that unauthorised occupant has no right to claim any injunction against the true owner. He submits that there is no dispute about the fact that respondent no.1 MHADA is owner of the suit property. There is no dispute that after 4th August, 2004, leave and licence was not extended in favour of the appellant in respect of the suit property. Hence, as on today, the appellant is unauthorised occupant and therefore has no right to claim any injunction against the true owner. He further submits that in any case as on today, the trial court has not disposed of Notice of Motion No.2320 of 2014. Same is pending for hearing and final disposal on its own merits. The trial court considered the facts and circumstances of the case along with documents on record and rejected the ad interim relief as prayed by the appellant in Notice of Motion No.2320 of 2014. Hence, there is no substance in the present Appeal from Order. Same be dismissed with costs.

10 The learned counsel for respondent no.3 Richa Realtors Developer submits that as on today all the buildings are already demolished for redevelopment. He submits that the suit structure of the appellant i.e. Wooden Booth comes in their way of development. He submits that because of the suit structure, the entire development

is held up. He further submits that the appellant has no right, title and interest to continue to occupy the suit structure because the same was allowed by the respondent no.1 MHADA only upto 4th August, 2004. Thereafter, MHADA has not extended the permission granted to the appellant for keeping her wooden booth for carrying out business of milk centre. Hence, as on today, the appellant is occupying the suit land unauthorisedly. Therefore, Appeal from Order be dismissed with costs.

11 I have heard both the sides at length. It is to be noted that Notice of Motion preferred by the appellant original plaintiff is pending for final disposal on its own merits. Admittedly, in the present proceeding, MHADA by their resolution no.5917 dated 10th May, 2003 allowed the appellant to keep her wooden booth for carrying out business of milk on their land admeasuring 10' x 5' sq.ft. As per their resolution, MHADA permitted appellant only for one year. Even the appellant executed the undertaking dated 8th August, 2003 stating that she will not carry out any construction on the said land. It is also stated in the said undertaking that MHADA allowed the appellant to keep her wooden booth for carrying on business of milk centre only for one year.

12 The appellant has not placed on record any agreement executed by MHADA to show that she is entitled to keep her wooden booth on the suit land for carrying out business of milk even after 4th August, 2004. Once the licence period is over, appellant has no right, title and interest in the suit premises. Just by paying the rent amount

in the office of the respondent no.1 MHADA,the appellant cannot claim the tenancy in respect of the suit land. As the leave and licence was only for one year which expired on 4th August, 2004 thereafter appellant becomes unauthorised occupant. Hence, the authority relied by the appellant in the matter of Rame Gowda (Dead) by Lrs. vs. M.Varadappa Naidu (Dead) by LRs. and Another (Supra) is not applicable on the facts and circumstances of the present case.

13 It is to be noted that the Apex court in the matter of *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*² held that it is well settled law that no injunction can be granted against the principal owner at the instance of person in unlawful possession. Admittedly, in the present matter, respondent no.1 is owner of the suit premises.

14 Considering the above mentioned facts and the law declared by the Apex Court in the matter of *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others* (Supra), I do not find any reason to interfere with the reasoned order passed by the trial court dated 20th June, 2014 in Notice of Motion No.2320 of 2014 rejecting appellant's prayer for ad interim relief.

15 Hence, Appeal from Order stands rejected. In view thereof, Civil Application No.1023 of 2014 does not survive. The same is also disposed of as infructuous.

² (2004) 3 SCC 137

16 No order as to costs.

(K.K.TATED, J.)