

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 950 OF 2014****IN****NOTICE OF MOTION NO. 1671 OF 2012****IN****L.C.SUIT NO. 1566 OF 2012****Chinna Pilai widow of Utandi Padyachi & Anr.****..... Appellants/
Org.Plaintiffs****VERSUS****The Municipal Corporation of Greater Mumbai
& Ors.****..... Respondents/
Org.Defendants**

Mr.Nitesh Acharya, i/b. Mr.Khan Mohd.Yousuf for the Appellants.

Ms.M.R.Bhoir for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 17th NOVEMBER, 2015****P.C.**

By this appeal, the appellant has impugned an order dated 23rd August, 2014 passed by the Civil Court at Mumbai rejecting the notice of motion filed by the appellant by which the appellants had applied for injunction against the Municipal Corporation and two others from dispossessing the appellant from the hut situated at Shaikh Misri Marg, Near Muslim Kabrastan, Antophill, Madona Colony, Antop Hill, Wadala (East), Mumbai. Learned counsel appearing for the appellants invited my attention to the several documents annexed to the compilation of the documents filed before this court and would submit that the appellants had acquired right in respect of the hut no.2 from Mr.Iyyer Perumal vide an affidavit dated 22nd March, 1994. He submits that since the appellant was in possession of

the said hut on 1st January 1995, the appellant cannot be evicted without providing alternate accommodation by the respondent.

2. Learned counsel for the appellants then submits that the entire order passed by the learned trial court while dismissing the notice of motion filed by the appellants was on the premise that in respect of the same hut which is in occupation of the appellant, the authority had already provided alternate accommodation to Mr.Iyyer Perumal whereas no alternative accommodation had been provided to the said Mr.Iyyer Perumal. In support of this submission, learned counsel placed reliance on the allotment letter issued in favour of Smt.Seles Mari Aarogyswami. He submits that Smt.Seles Mari Aarogyswami has nothing to do with hut no.2 and thus impugned order passed by the learned trial judge has to be set aside on this ground alone.

3. It is submitted by the learned counsel for the appellants that in any event if the appellants is not considered in possession on 1st January 1995 in view of the amendment to the Slums Act, the datum line is extended to 1st January 2000 and thus the appellants may be entitled to avail of the benefit of the said amendment. He submits that the appellants have already applied for copy of the photo pass and alternate accommodation in lieu of hut no.2 and the same is pending.

4. Learned counsel appearing for the Municipal Corporation on the other hand supports the prima facie observations made by the learned trial judge and would submit that in the electoral roll submitted by the appellant herself, names of three persons including names of Mr.Iyyer Perumal and Smt.Seles Mari Aarogyswami was shown in respect of the same hutment i.e. hut no.19. He submits that out of the occupants occupying the same hut no.19, the authority has already provided alternate accommodation to one of them and thus the appellant who was claiming

through Mr.Iyyer Perumal cannot be provided any alternate accommodation in respect of the same hut.

5. Learned counsel for the Municipal Corporation also invited my attention to the election identity card issued by the Election Commission of India in 2009 in the name of the appellant which shows her address at 21, Madonna Colony. My attention is also invited to the document forming part of the compilation rendered by the appellant i.e. receipt issued by the Unit Trust of India in favour of the appellant which is dated 26th October, 1998 which shows the address of Madona Colony, Hut No.11, S.M.Road, Wadala, Mumabi 400 037. The only explanation rendered by the learned counsel for the appellants in respect of different numbers of hutment shown in the different documents produced by the appellant is that the structure being in slum, the authority was given different numbers in view of the confusion.

6. A perusal of the record prima facie indicates that the appellant is claiming through Mr.Iyyer Perumal under a writing/affidavit. The electoral roll produced by the appellant itself indicates that the in hut no.19 the said Mr.Iyyer Perumal was staying along with Smt.Seles Mari Aarogyswami and the authority has already allotted alternate accommodation in favour of Smt.Seles Mari Aarogyswami. Though I have heard learned counsel for the appellant at great length and have given an opportunity to demonstrate before this court that the structure occupied by the appellant is different than that was occupied by Mr.Iyyer and/or Smt.Seles Mari Aarogyswami, the appellant is not able to produce any document for the satisfaction of this court.

7. A perusal of the impugned order passed by the learned trial court indicates that the trial judge has passed a detailed order after considering all the aspects and

the documents produced by the appellant before the trial court and has rightly refused to grant any interim injunction in favour of the appellant. The learned trial judge has also taken cognizance of the fact that alternate accommodation has been already provided by the authority in favour of the person from whom the appellant was claiming right. In my view the appeal is devoid of merits and is accordingly dismissed.

8. Insofar as submission of the learned counsel for the appellant that application of his client for photo pass on the basis of the amendment to the Slums Act before the authority is concerned, this court has not expressed any views on the merits of such application. No order as to costs.

9. On the oral application of the learned counsel for the applicant, the respondent shall not demolish the suit structure and/or disposes the appellant for a period of four weeks from today.

[R.D. DHANUKA, J.]