

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST.) NO. 30842 OF 2015****IN****NOTICE OF MOTION NO. OF 2015****IN****L.C.SUIT NO. 2593 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO. 30843 OF 2015****IN****APPEAL FROM ORDER (ST.) NO. 30842 OF 2015****IN****NOTICE OF MOTION NO. OF 2015****IN****L.C.SUIT NO. 2593 OF 2015****Narendra Babulal Thakkar & Ors.****..... Appellants/
Original Plaintiffs****VERSUS****Municipal Corporation of Greater Bombay
& Anr.****..... Respondents/
Original Defendants**

Mr.M.V.Holamagi for the Appellants.

Mr.S.K.Sonawane for BMC.

Mr.Chetan Kapadia a/w. Ms. Kausar Banatwala, i/b. Mr.Tushar Bhavsar for the Intervener.

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

Mr.Kapadia, learned counsel for the Everest Fincap Pvt. Ltd. developers seeks to intervene in the matter. I have heard the learned counsel for the

developers also while disposing of this appeal.

2. By this appeal, the appellants have impugned the order passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellants for stay of the notice issued by the Municipal Corporation initiated under the provisions of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

3. A perusal of the notice annexed at Ex.G to the plaint issued by the authority clearly indicates that the said notice has been issued under the provisions of sections 33 and 38 of the Slums Act. A perusal of the impugned order passed by the learned trial Judge indicates that the learned trial Judge has accepted the plea raised by the Municipal Corporation that the action initiated by the Authority was under sections 33 and 38 of the Slums Act and in view of the section 42 of the said Act, the suit could not be entertained.

4. My attention is invited to the order passed by the authority on 26th October, 2015 pursuant to the said notice which was subject matter of the suit. A perusal of the said order indicates that the construction work can commence only after making payment as prescribed under the said order is made and after 14 days thereof.

5. In my view, the learned trial judge has rightly rejected to grant the ad-interim order on the ground of bar under section 42 of the Slums Act. In my prima facie view the remedy of the appellants would be to file the appropriate proceedings under Slums Act.

6. Insofar as submission of Mr.Holamagi, learned counsel for the appellants that the Municipal Corporation as well as the developer has played fraud upon the appellants is concerned, neither any such allegations are pleaded before the trial judge nor in the present proceedings.

7. The appeal is devoid of merits and is accordingly dismissed. In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

8. The respondents are directed to file affidavit in reply within four weeks from today. The Trial Court is directed to dispose of the Notice of Motion expeditiously.

[R.D. DHANUKA, J.]