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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2466 OF 2015 WITH
CHAMBER SUMMONS NO.70 of 2015

Audrey Ludwig & Ors. ...Petitioners
vs.
Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.J.Reis, Senior Counsel i/b Omkar M. Kulkarni for
the Petitioners
Mr.Ram Apte, Senior Counsel a/w Mr.Vinod Mahadik for
the respondent Nos.1 to 3 and 7.
Mr.Girish Godbole a/w Mr.Vishal Kanade i/b Yogendra
M. Kanchan for respondent No.4
Ms Tulsi Dhami i/b D.A.Nalawade for respondent No.6

CORAM : A.S.OKA, &
G.S.PATEL,JJ.
DATE : NOVEMBER 24, 2015

P.C.:

1 Heard the learned senior counsel for the
petitioner. Rejoinder of the petitioner is taken on
record. We have heard the learned senior counsel
for the respondent Nos.1,2 and 7 and the learned
counsel for the respondent No.4. By this petition
under Article 226 of the Constitution of India, the
petitioners are challenging the order dated 17th
January 2015 passed by the Officers of the Mumbai
Municipal Corporation on 14th January 2015. The said
order holds that the petitioners who are claiming to
be the legal representatives of the deceased
Mrs.Lulu Vas and Mr.Bennett Vas have no subsisting

right, title or interest in the Plot No.22, G/S Ward, Scheme No.58, Worli Division, Worli, Mumbai 400 025. It records that earlier communications and the orders issued by the Mumbai Municipal Corporation stand cancelled.

2 The submission of the learned senior counsel for the petitioners is that the Mumbai Municipal Corporation has accepted in the past that the petitioners are the lessees of the said plot. He pointed out that a show cause notice was issued on 26th March 2012 which was stayed under the order dated 26th November 2013 of the Civil Court. He pointed out that subsequently, on 17th January 2015, the said show cause notice has been withdrawn. He would, therefore, urge that after withdrawal of the show cause notice, the impugned order deciding the issue of right, title or interest could not have been issued by the Mumbai Municipal Corporation. He submits that earlier communications/orders could not have been withdrawn in this fashion.

3 The learned counsel for the respondent No.4 raises a preliminary objection by relying upon the decision of the Apex Court in the case of State Of Rajasthan vs Bhawani Singh And Others¹, by contending that the disputed questions arisen in this writ petition.

4 The petitioners are claiming to be the lessees of the plot in question. Their contention that they

¹ 1993 Supp (1) SCC 306

are the lessees has been disputed by the Mumbai Municipal Corporation for reasons recorded in the impugned order. Therefore, the petitioners will have to establish their alleged right as lessees by approaching the Competent Court.

5 In paragraph 7 of the decision of the Apex Court in the case of State of Rajasthan vs Bhawani Singh And Others it is held thus:

"7 Having heard the counsel for the parties, we are of the opinion that the writ petition was misconceived in so far as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition"

6 Therefore, in our view, appropriate remedy available to the petitioners is to approach the Competent Court having jurisdiction to decide the issue of title in respect of the said plot. We, therefore, decline to entertain this petition under Article 226 of the Constitution of India by granting liberty to the petitioners to adopt appropriate remedy in accordance with law. Accordingly, the writ petition is rejected. However, the rejection of the writ petition will not prevent the petitioners from adopting appropriate remedy in accordance with law.

7 At this stage, the learned counsel for the petitioners seeks continuation of ad-interim relief granted on 9th February 2015. To enable the petitioner to adopt appropriate remedy, ad-interim relief granted on 9th February 2015 shall continue to operate for a period of one month from today. The Chamber Summons No.70 of 2015 does not survive and the same is also disposed of.

(G.S.PATEL,J.)

(A.S.OKA,J.)