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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 435 OF 2014
IN
SUIT NO. 2862 OF 2008**

Global Buildcon Pvt. Ltd.	...Applicant
In the matter between	
Abdul Sattar Haji Usman & Anr.	...Plaintiffs
VS	
The Archbishop of Bombay & Global Buildcon Pvt. Ltd. & Ors.	...Defendants

**NOTICE OF MOTION NO. 440 OF 2014
IN
SUIT NO. 2862 OF 2008**

Tirupati Balaji SRA CHS Ltd	...Applicant
In the matter between	
Abdul Sattar Haji Usman & Anr.	...Plaintiffs
VS	
The Archbishop of Bombay & Global Buildcon Pvt. Ltd. & Ors.	...Defendants

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Mr Sunil S. Yadav for the Plaintiffs
Mr G.W.Mattos, AGP for Defendant No.2
Mr Vijay Vaghela for Defendant No.4.
Mr Chetan Mhatre i/b Utangale & Co. for Defendant Nos.9 and 10

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CORAM : S.C. GUPTE, J.

DECEMBER 08, 2015

P.C. :

Notice of Motion No. 435 of 2014 and Notice of Motion No.440 of 2014 are, respectively, taken out by Defendant Nos.5 and 4 for setting aside the suit valuation in the present suit, as being in excess and contrary to, or inconsistent with, Section 17 of the Maharashtra Slum Area (Encroachment and Improvement) Act 1971 ("Slum Act"), as also against the provisions of Appendix II

of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules 1983. The Motions also seek an inquiry into the suit valuation through Taxing Master as per Section 8 and 9 of the provisions of the Maharashtra Court Fees Act read with Suits Valuation Act and Rules referred to above.

2 The application in these Motions is on the footing that the valuation of the suit by the Plaintiffs, which has been enhanced in pursuance of an order passed by the Bombay City Civil Court, when the suit was pending before it, is not in accordance with law. It is submitted by the Defendants that the valuation of the suit in terms of para 63-A, which was introduced by way of an amendment and which was accepted by the Bombay City Civil Court, contains an incorrect valuation. It is submitted that valuation was enhanced with an ulterior motive of bringing the suit back before this Court and that such an act amounts to forum shopping.

3 The suit is filed by the Plaintiffs on the ground that they are owners of the suit property, having purchased the same by a registered conveyance from Defendant No.1. It is the Plaintiffs' case that Defendant No.2, which is State of Maharashtra, has wrongly acquired the suit property under a notification issued under Section 4(1) of the Slum Act. It is the Plaintiffs' case that the notification was issued without complying with due process of law, and that the notification was bad as being ultravires the Slum Act. It is also the Plaintiffs' case that Section 14(1) of the Slum Act is unconstitutional. The Plaintiffs, in the premises, apply for a declaration of their ownership of the suit property and directions against Defendant Nos.1,2 and 4 to handover peaceful possession of the same to the Plaintiffs. The Plaintiffs also pray for a declaration that Section 14(1) of the Slum Act is unconstitutional and required to be struck down, and the acquisition of the suit property by the State Government is vitiated by fraud and liable to be struck down. The suit also seeks a permanent restraint against the Defendants from in any way interfering with use, occupation and enjoyment of the suit property by the Plaintiffs. After the amendment to the Bombay City Civil Court Act, since the valuation of the suit property was made at Rs.17.44 lacs on the

basis of the compensation deposited by the State Government for acquisition of the same, i.e. less than Rs.1 Crore, the suit was transferred to the Bombay City Civil Court for trial. Subsequently, the Plaintiffs took out a Chamber Summons, being, Chamber Summons No.139 of 2013, in the suit before Bombay City Civil Court for correcting the valuation of the suit and allowing the Plaintiffs to amend the plaint on that basis. It was the case of the Plaintiffs before the City Civil Court in that Chamber Summons that the suit was filed claiming possession of the suit property and that, accordingly, the valuation of the suit had to be under Section 6(iv)(d) of the Bombay Court Fees Act and that accordingly the suit ought to be valued at Rs.11,93,67,880/- as per the ready reckoner rate of the year 2007. (The ready reckoner rate of the suit property was Rs.22,300 per square feet with 1 FSI.) The Chamber Summons was opposed by Defendant Nos.4 and 5 herein on the ground that the suit valuation proposed by the Plaintiffs was neither correct nor bona fide. It was submitted before the Court that the land having been vested in the State Government, there was no question of applying the market price for determination of suit valuation. It was submitted that the valuation had to be on the basis of compensation deposited by the State Government in the Court towards the suit property. It was also submitted that the proposed correction of suit valuation was an attempt to retain jurisdiction of the original side of this Court. The City Civil Court, by its order dated 17 and 18 April 2013, repelled these contentions of Defendants Nos. 4 and 5 and allowed the Plaintiffs' Chamber Summons permitting the Plaintiffs to amend the plaint by correcting the suit valuation. That order has not been challenged by Defendant Nos.4 and 5 and has since become final. Based on the amended suit valuation, the suit has been re-transferred to this Court.

4 The application of the Defendants in these Motions needs to be considered in the backdrop of the above mentioned facts. Section 4 of the Suits Valuation Act, 1887 (as applicable in Maharashtra) provides that where a suit mentioned in clause (c), (d), (e), (g), (i) or (j) of paragraph (iv) or paragraph (vii) in Section 6 or Articles 3,5,6 or 7 in Schedule I or clause (f) of Article 23 in Schedule II of the Bombay Court Fees Act, 1959, relates to land or an interest in land of which the value has been determined by rules under Section 3 of the Suits

Valuation Act, the amount of suit valuation shall not exceed the value of the land or interest as determined by those rules. Section 8 of the Suits Valuation Act (as applicable in Maharashtra) provides that where in suits other than those referred to in paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in Section 6 of the Bombay Court Fees, 1959, the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. The present suit is covered by clause (d) of paragraph (iv) of Section 6 of the Bombay Court Fees Act. Accordingly, the amount of suit valuation (a) cannot exceed the value of land as determined by rules framed by the State Government under Section 3 of the Suits Valuation Act, and (b) must be the same as the value as determinable for computation of Court Fees. Under Section 6 paragraph (iv) clause (d) of the Bombay Court Fees Act, the value is determinable as in the case of a suit for possession on the basis of title of the subject matter, which, in turn, is based on market value. That value has been fixed by the Plaintiffs on the basis of the market value calculated at the ready reckoner rate applicable when the suit was filed, as mentioned in paragraph 63-A of the plaint which was introduced in the plaint by way of the amendment sanctioned by the City Civil Court.

5 Under Section 8 of the Court Fees Act, the Court is empowered to revise the valuation of any suit and determine the correct valuation, if it is of the opinion that the subject matter of the suit has been wrongly valued or if an application is made to the Court for revision of such valuation. For the purpose of such revision and determination, the Court is empowered to hold such inquiry as it thinks fit. Section 9 provides for the procedure of such inquiry. Under Section 9, the Court may depute or issue a commission to make any local or other investigation and call for a report for determining the correct valuation under Section 8. It is submitted by Defendant Nos.4 and 5 in support of these Motions that on their application, this Court ought to make an inquiry under Sections 8 and 9 of the Court Fees Act, and revise and determine the correct valuation of the suit.

6 If one has regard to the Chamber Summons taken out by the

Plaintiffs in the suit while it was pending before the City Civil Court and the order passed by the City Civil Court on 18 April 2013, it would clearly appear that these are the very provisions of law which were invoked by the Plaintiffs themselves before the City Civil Court, when they applied for revision of the suit valuation. It was the specific application of the Plaintiffs before that Court in the Chamber Summons that the suit had been wrongly valued and the valuation needs to be revised. The respective cases urged by the parties before the City Civil Court in the Chamber Summons make it clear that it was the Plaintiffs' contention that the suit valuation could not be on the basis of compensation determined by the State Government as payable for the acquisition of the land but must be on the basis of the ready reckoner rate for the year 2007 for the value of the land; that at the time of filing of the suit, the suit value was derived from the compensation amount; and that the Plaintiffs were now advised that the correct valuation must reflect the market price of the suit property which can be arrived at on the basis of the ready reckoner rates. It is also clear from the Defendants' objections to the Plaintiffs' application before the City Civil Court that the Defendants raised the very same contentions which are urged before this Court in these Motions and particularly that the valuation of the property had to be on the basis of the compensation determined by the State Government. The City Civil Court in its order, firstly, considered whether the suit would be governed by Section 6(iv)(d) of the Court Fees Act. The Court held that the suit was for declaration of the Plaintiffs' right to the property with a consequential relief of possession and would, accordingly, be governed by Section 6(iv)(d) of the Court Fees Act. The Court then considered that on the basis of the frame of the suit, ad-valorem court fees ought to be based on the market value of the property and not on the basis of the compensation amount fixed by the State Government. The Court, then, considered the value of the suit property on the basis of the ready reckoner rate of 2007. The value for the purpose of court fee and for suit valuation purposes had to be the same. Accordingly, the suit was valued at the present value as per para 63-A. The City Civil Court thus determined the controversy as to the suit valuation, when it disposed of the Chamber Summons by its order dated 17 and 18 April 2013. This order is passed on an inquiry as to the correct valuation of the suit property. The order has since become final, the Defendants not having carried it further in

appeal. In the premises, there is no question of this Court once again inquiring into the correct valuation of the suit.

7 There is, accordingly, no merit in the Notices of Motion herein. Notices of Motion are dismissed. There shall, however, be no order as to costs.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.