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

**NOTICE OF MOTION NO. 1253 OF 2014
IN
SUIT NO.329 OF 2011**

Shree Om Sai Welfare Society
VS
Maharashtra Housing & Area Development Authority
& Ors.

...Applicant/Plaintiff
...Defendants

.....
Mr Tulsidas Nair, Secretary of Plaintiff Society.
Mr P.G.Lad, Addl. G.P. for the Defendants
.....

CORAM : S.C. GUPTE, J.

FEBRUARY 02, 2015

P.C. :

This Notice of Motion is taken out seeking, firstly, modification of an order passed by this Court on 27 March 2014, and secondly, for an interim injunction restraining the Defendants from putting up any construction allotting the suit property to any third party or from disturbing the identity of the suit property. The Plaintiff claims to be an association of residents, registered as a society under the Registration Act, 1860. The Plaintiff has applied for allotment of the plot of land at Kole Kalyan, Kalina, Santacruz (E), Mumbai-400 098, described as the suit property. It is the case of the Plaintiff that on 8 March 2006, the Chief Officer of Maharashtra Housing Area Development Authority (for short 'MHADA') had recommended the allotment of the suit property to the Plaintiff. A letter was, accordingly, addressed by the Chief Officer of MHADA to the Chief Secretary, Housing Department, Maharashtra Government, Mantralaya, Mumbai – 400 032. The matter does not appear to have progressed any further, after the purported recommendation. It is the case of the Plaintiff that the allotment application of the Plaintiff is still under progress. On that basis, the Plaintiff is seeking an order from the Court as below:

“(a) That this Hon'ble Court be pleased to consider that the said suit properties bearing CTS No.497, and having Survey Nos.5598 (part), 5547, 5611 (part-B), C.T.S.No.312/16, admeasuring 6700 sq.mtrs. Situated at Kole Kalyan, Kalina, Santacruz (East), Mumbai – 400 098 is the property under the process of allotment in favour of the Plaintiffs which are approved and the Plaintiffs entitled for possession, use and enjoyment of the same and entitled to all right, title and interest and further consider that the Defendants are not entitled to interfere, disturb, obstruct, dispossess the Plaintiffs and/or deny the right of allotment and to issue regular correspondence in favour of the Plaintiffs and from the said Defendants be prohibited from issuing any communication and recommending in favour of any other than the Plaintiffs;”

A permanent restraint order has also been sought on this basis against the Defendants restraining them from interfering with the possession of the Plaintiff of, or allowing any unauthorized construction on, the suit premises, with other consequential reliefs such as directions to the local police station to provide police assistance and help to the Plaintiff to protect the property from encroachment.

2 The averments in the plaint as also the documents produced therewith do not indicate any enforceable right in the Plaintiff with respect to the suit premises. The Plaintiff appears to have come to this Court merely on an expectation that the suit premises are being considered by the State Government for allotment in favour of the Plaintiff and are likely to be so allotted. In the Written Statement, Defendant Nos.1 and 2, who are MHADA and Chief Officer of MHADA, respectively have claimed that the suit premises are acquired by MHADA for their housing project; and that the suit premises have not been allotted to any third party but that the development has been taken up by Defendant No.1-MHADA itself. It is submitted by the Defendants that the land is not available for allotment under Rule 16 of the Maharashtra Housing Area Development (Disposal of Land) Regulations.

3 In the premises, no case whatsoever has been made out by the

plaintiff for grant of any interim relief to the Plaintiff. It is pertinent to note that even earlier the Plaintiff had taken out a Notice of Motion in the present suit, seeking an injunction restraining MHADA from interfering with the Plaintiff's possession and or denying allotment of the land to the Plaintiff, directions to the local police station to provide assistance to the Plaintiff for protection of the property against encroachment. Disposing of that Notice of Motion, a learned Single Judge of this Court on 6 April 2011 observed that there was no vested or established legal right which enures to the benefit of the Plaintiff and there was no foundation in law on the basis of which the Plaintiff could seek an injunction against MHADA. The Court also noted that the Plaintiff was not in possession of the land and hence there was no reason for the Court to protect the Plaintiff's possession. It is difficult to see how the Plaintiff can maintain the present Notice of Motion, in the face of that order passed by this Court rejecting the very same reliefs, which are sought in the present Notice of Motion, particularly when there is no change of circumstances pleaded in the present Notice of Motion.

4 As far as the prayer clause (a) of the present Notice of Motion is concerned, this Court had already considered the matter in its order dated 27 March 2014 and framed issues in the suit, observing that these issues arise mainly between the Plaintiff and Defendant Nos.1 and 2, who were the real contesting Defendants. There is no question of modifying this order or passing any ex-parte decree against Defendant No.3, in the facts of the present case. As far prayer clause (b) of the Notice of Motion is concerned, the restraint order having been already refused by this Court and there being absolutely no legal basis for granting such relief, the same cannot be considered.

5 The Notice of Motion is, accordingly, rejected. There shall be no order as to costs.

(S.C.GUPTA J.)