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

**NOTICE OF MOTION NO.1516 OF 2011
IN
SUIT NO.1108 OF 2011
WITH
NOTICE OF MOTION NO.1551 OF 2011
IN
SUIT NO.1163 OF 2011**

Lokhandwala Infrastructure Pvt. Ltd.

..Plaintiffs

-Versus-

Om Dattaji Nagar Rahiwasi Seva Sangh
& Ors.

..Defendants

.....
Mr. Anil Rao ib. M/s. Wadia Gandhi & Co. for the Plaintiffs in S/1108/2011 and S/1163/2011.

Ms. Naira Jejeebhoy a/w Ms. Aliya Khan i/b. M/s. Bharucha & Partners for Defendant No.26 in S/1108/2011 and Defendant No.23 in S/1163/2011.

M. Akhil Kupade i/b. M/s. Utangale & Co. for Defendant No.27 in S/1108/2011.

Ms. Neha P. Wadhwa i/b. Mr. J. G. Reddy for Defendant No.24 in S/1163/2011.

Mr. Sandeep Patil for Defendant No.28-BMC in S/1108/2011.
.....

CORAM: A.K.MENON, J.

DATE : 10th AUGUST, 2015.

P.C.:

These Notices of Motion are taken out by the plaintiffs seeking appointment of the Court Receiver, High Court, Bombay and an injunction restraining defendant nos.1 to 25 and members of defendant nos.1, 2 and defendant no.26 from implementing or proceeding with Development Agreement dated 30th September, 2009 between defendant no.26 or creating any third party in respect of the suit property described in Exhibit A. By an order

dated 5th April, 2011 the learned Single Judge had refused an ad-interim reliefs and had made notice of motion returnable on 13th June, 2011.

2. In appeal, the Division Bench of this Court vide order dated 7th May, 2011 passed the following order:-

“(i) Orders passed by the learned Single Judge is partly modified to the extent that we direct the respondent no.23 not to sell, transfer, alienate, encumber or otherwise deal with or part with possession to the extent of 15% of the area of free sale component, i.e. 15,000 sq.ft. in the free sale area.
(ii) Order of the learned Single Judge refusing to grant injunction for the development and refusing to appoint Receiver is confirmed.
Appeals are disposed of in the aforesaid terms.”

3. The appeals were disposed of protecting possession to the extent of 15% of the area of the free sale component in the free sale area. This order was carried in appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 20th May, 2011 while dismissing the SLP effectively confirmed the order of the Division Bench. Today, when the matter is called out for hearing, counsel mentioned that an issue under section 9A had been raised in the affidavits-in-reply as a consequence of which a preliminary issue had been framed vide order dated 19th December, 2011 in both the suits. This preliminary issue came to be decided vide order dated 30th October, 2014.

4. The order of the Single Judge dated 30th October, 2014 passed in Notice of Motion no.1516/2011 in Suit no.1108/2011, the learned Single Judge held that there is no substance in the plea of bar of jurisdiction under section 42 of the Slum Act. The preliminary issue was decided in favour of the plaintiff and the Court held that it had jurisdiction to entertain and try the suit. This order under section 9A was subsequently challenged. The Notice of Motion was thereafter directed to be heard. That is how the matter is listed today. It is common ground that the order dated 30th October, 2014 a subject matter of Appeal (L)No.718/2011 which is said to be pending before a Division Bench of this Court. However, there is no stay of operation of the findings or the order dated 30th October, 2014. In any event, as far as the ad-interim order which operates today is concerned, the same has been confirmed by the Hon'ble Supreme Court in SLP(Civil) No. 15090/2011. In view of the same, learned counsel for the plaintiffs does not press for any other reliefs in the Notices of Motion.

5. Learned counsel for defendant no.26 submits that in view of the pendency of the appeal, her right to agitate the findings as far as preliminary issue is concerned, may be kept open as an appeal is pending before the Division Bench. That is a reasonable suggestion. The plaintiff is not seeking any other relief since its rights are protected by the order of the Division Bench reported in **2011(4) Bom.C.R. 583**. In the circumstances, I pass the following order:-

- (i) Notice of Motion No.1516/2011 in Suit No.1108/2011 and Notice of Motion No.1551/2011 in Suit No.1163/2011 are disposed of in terms of the order of the Division Bench dated 7th May, 2011 in Appeal(L)Nos.235 & 234/2011 and reported in 2011(4) Bom.C.R. 583.
- (ii) This order issues without prejudice to the defendants rights to pursue the challenge to the order dated 30th October, 2014 deciding the preliminary issue.
- (iii) There will be no orders as to costs.

(A. K. MENON, J.)

wadhwa