

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.112 OF 2016
along with
CIVIL APPLICATION NO.148 OF 2016
in
APPEAL FROM ORDER NO.112 OF 2016**

**ALONG WITH
APPEAL FROM ORDER NO.124 OF 2016
along with
CIVIL APPLICATION NO.167 OF 2016
in
APPEAL FROM ORDER NO.124 OF 2016**

Vijay Co-op. Housing Society (Prop)
through its Chief Promoter .. Appellant/Applicant
Vs.

Maharashtra Housing and Area
Development Authority & Ors. .. Respondents

Mr.Prashant Karande for the appellant/applicant.

Mr.S.P.Thorat for the respondent nos.1 & 2.

Mr.N.A.Ghatte for the respondent nos.6 to 10 in Appeal from Order
No.112 of 2016 and for the respondent nos.18 to 20 in Appeal from
Order No.124 of 2016

CORAM : R.D. DHANUKA, J.

DATE : 15th February 2016

P.C.

. By consent of the parties, both these appeals are heard
together.

2. By these appeals, the appellant has impugned the order dated
23rd December 2015 passed by the learned trial Judge refusing to grant
ad-interim relief in the notice of motion in which the appellant (original
plaintiff) had applied for injunction restraining the respondent nos.3 to

10 from dealing with and/or creating any third party interest in any manner whatsoever in respect of the suit property.

3. There is no dispute that the appellant which is a proposed Society made an application for acquisition of the property under Section 93 read with Section 103B of Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act). Pursuant to the said application made by the appellant, Special Land Acquisition Officer (SLAO) passed an order under Sections 93 (3) and 93(4) on 27th May 1987 thereby accepting the acquisition proposal without any modifications and further ordered that a final statutory order under Section 93(5) should be issued according to law. The Maharashtra Housing and Area Development Authority (MHADA) passed further order on 19th June 2001 thereby holding that the net average monthly income of the property is Rs.251.50 only. It is the case of the appellant-Society that pursuant to the said order passed by the SLAO, the appellant has deposited 30% of the acquisition price with the defendant no.1. The appellant also agreed to deposit balance 70% amount as soon as a demand was rendered by the SLAO.

4. It is not in dispute that constitutional validity of Chapter VIII-A of the MHADA Act was challenged by large number of the proposed Societies in this Court. This Court had upheld the constitutional validity of Chapter VIII-A of the MHADA Act. The matter is now pending in the Supreme Court. Various interim orders are passed by the Supreme Court in those proceedings. It is directed by the Supreme Court that no final order in the acquisition proceedings be made in the meantime. Learned counsel appearing for the appellant states that the

Supreme Court has also passed an interim order to the effect that no conveyance shall be executed. It is the case of the appellant that in spite of the fact that the notification thereby vesting the suit property in MHADA was issued under Chapter VIII-A of MHADA Act, the respondent no.3 to 5 purported to have executed a Deed of Conveyance in favour of the respondent nos.6 to 10 under the provisions of Chapter VIII-A of the MHADA Act. He submits that since the property was already acquired and is vested in MHADA, the said property could not have been dealt with by the erstwhile owners of the suit property. He submits that the balance amount could not be deposited in view of the pending proceedings in the Supreme Court and in view of the MHADA not demanding the said balance amount. The appellant was, however, always ready and willing to deposit the said amount.

5. It is submitted by the learned counsel for the appellant that after obtaining the conveyance illegally by the defendant nos.6 to 10, the defendant nos.6 to 10 have filed proceedings for eviction against the members of the appellant-proposed society. He submits that the learned trial Judge has overlooked all these relevant aspects in the impugned order and has refused to grant ad-interim relief.

6. Learned counsel for the respondent nos.6 to 10 would submit that the appellant-society did not take any steps after 1987. He submits that the appellant-society had already withdrawn their proposal under the provisions of Chapter VIII-A of the MHADA Act. He submits that his clients have spent substantial amount in acquisition of the suit property. He also placed reliance on the permission granted by the MHADA for carrying out repairs in the suit property.

7. Mr.Thorat, learned counsel appearing for the MHADA submits that since the property already stood vested in MHADA under Chapter VIII-A of the MHADA Act, the said property could not have been dealt with by erstwhile owners in favour of the respondent nos.6 to 10. He submits that in so far as the permission of MHADA relied upon by the respondent nos.6 to 10 is concerned, no right is created in favour of the respondent nos.6 to 10 merely by virtue of granting such permission to carry out repairs in the suit property. He submits that in the letter dated 17th January 2011, the MHADA had specifically made it clear that the said Letter of Intent should not be construed as No Objection Certificate, but it was only a letter permitting the respondent nos.6 to 10 to apply to the Municipal Corporation for obtaining/approval of an IOD of the proposed building plans.

8. My attention is also invited to the letter dated 15th June 2013 issued by the MHADA to the respondent nos.6 to 10 making it clear that the earlier Letter of Intent issued by the MHADA on 17th January 2011 was valid upto 16th January 2012 and the same was extended upto 30th September 2013 subject to the condition that the terms and conditions prescribed in the Letter of Intent dated 17th January 2011 shall be complied with within the extended time limit, failing which the Letter of Intent shall stand cancelled. No further revalidation will be permitted. It is submitted that respondent nos.6 to 10, however, did not comply with the terms and conditions prescribed in the Letter of Intent dated 17th January 2011 and the said Letter of Intent which was extended till 30th September 2013 has come to an end.

9. Mr.Karande, learned counsel appearing for the appellant in rejoinder submits that few members of the appellant-society in collusion with the erstwhile owners addressed a letter to the MHADA for withdrawal of the acquisition proposal. However, the fact remains that the said acquisition proceedings initiated by the appellant-society and the orders passed thereon by the MHADA cannot be withdrawn. He submits that since the suit property is already vested in MHADA and the said vesting order is not vacated, the erstwhile owners could not claim any interest in the suit property.

10. A perusal of the impugned order passed by the learned trial Judge prima facie indicates that the proposed society had applied for acquisition of the suit property under Chapter VIII-A of the MHADA Act. The MHADA had passed the appropriate order of vesting under the provisions of Chapter VIII-A of the MHADA Act and had in fact determined the amount to be deposited by the appellant-society.

11. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has not considered the aforesaid crucial aspects while rejecting the ad-interim relief. In my prima facie view, the erstwhile owners could not have executed the Deed of Conveyance since the order of vesting was not vacated. In view of the fact that the suit property already having been vested in MHADA and such order of vesting not having been vacated, the property could not have been dealt with by the erstwhile owners. In my prima facie view, the respondent nos.6 to 10 thus cannot act upon such conveyance. Since the respondents have not filed affidavit-in-reply before the learned trial

Judge, it would be appropriate, if the following order is passed :-

- (i) The impugned order dated 23rd December 2015 passed by the learned trial Judge refusing to grant ad-interim relief is set aside;
- (ii) There shall be ad-interim relief in terms of prayer clause (c) of the notice of motion;
- (iii) The respondent nos.6 to 10 also shall not take any steps pursuant to the Deed of Conveyance executed in their favour by the erstwhile owners during the pendency of the notice of motion;
- (iv) The respondents (original defendants) are directed to file affidavit-in-reply within four weeks from today and serve a copy thereof upon the learned advocate representing the appellant simultaneously;
- (v) Rejoinder, if any, shall be filed within two weeks from the date of service of the affidavit-in-reply;
- (vi) Learned trial Judge shall make an endeavour to dispose of the notice of motion expeditiously and not later than one year from today.

12. Both the appeals from order are disposed of in aforesaid terms. In view of disposal of the appeals from order, civil applications do not survive and the same are accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.