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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.4528 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.4530 OF 2016

N. Kamraj Nadar & Anr. ...Appellants
V/s.
The Municipal Corporation for Gr. Mumbai & Ors. ...Respondents

Mr.R.S. Apte, Senior Counsel i/b Mr.Mohan B. Jadhav for the Appellants.
Ms.M.R. Bhoir for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 17TH FEBRUARY, 2016.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m. in view of extreme urgency.
2. The appellants have impugned the order dated 11th February, 2016 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellants (original plaintiffs) for injunction restraining the respondents from dispossessing the appellants from the suit premises on the basis of the notice dated 2nd February, 2016. Mr.Apte, learned senior counsel appearing of the appellants submits that the appellants were staying in the suit premises for quite some time along with the original allottee of the suit flat under S.R.A. Scheme. Ten years period has already

expired in the year 2013. He submits that the original allottee has executed a Will bequeathing the suit property in favour of one of the appellants. Such beneficiary has already filed a testamentary proceedings in the appropriate Court. He submits that the legal heirs of the said original allottee have also given their consent in favour of the appellants in the said testamentary proceedings.

3. It is submitted by the learned senior counsel for the appellants that when the appellants went to serve the papers and proceedings upon the Municipal Corporation, the Municipal Corporation has sealed the premises. All the articles of the appellants are lying in the suit premises. The appellants have been staying with their family members in the suit property for last several years. He submits that the notice of motion has been filed by the appellants *inter-alia* praying for de-sealing of the suit premises. It is submitted that since the original allottee was allotted the suit premises under the S.R.A. scheme, the Municipal Corporation has no jurisdiction to seal the suit premises. He submits that the appellants and their family members are on the street in view of high handed action on the part of the Municipal Corporation in sealing the suit premises.

4. Learned counsel appearing for the Municipal Corporation on the other hand submits that the Corporation has initiated the action against the appellants long back. She submits that the plot

belongs to the Municipal Corporation which was developed under the S.R.A. scheme and thus the Municipal Corporation is empowered to initiate an action against the original allottee and also the appellants who are in illegal possession of the suit property. She submits that since the Municipal Corporation has already sealed the premises, the appeal filed by the appellants has become infructuous.

5. There is no dispute that the appellants have been staying along with their family members in the suit premises for quite some time. The appellants have also filed the testamentary petition for obtaining the probate of the alleged Will executed by the original allottee bequeathing the suit property in favour of one of the appellants. The legal heirs of the original allottee have also given their consent for grant of probate in favour of the appellants.

6. In my *prima-facie* view there is substance in the submissions made by learned senior counsel for the appellants that the allotment made to the original allottee by the authority under the S.R.A. scheme, the Municipal Corporation could not have sealed the premises.

7. In my view, the appellants could not have been thrown out from the suit premises by putting a seal on the suit premises by the Municipal Corporation. The notice of motion filed by the appellants for de-sealing the suit premises is still pending.

8. Insofar as the submission made by learned counsel for the Municipal Corporation that the appeal has become infructuous in view of the Municipal Corporation already having sealed the premises is concerned, there is no dispute that the notice of motion filed by the appellants for de-sealing of the premises is pending. Even before the appellants could move before this Court, the Municipal Corporation has arbitrarily sealed the premises. The appellants and their family members are on the street. I am of the view that the notice of motion filed by the appellants before the learned trial Court for de-sealing of the premises has to be heard and disposed on its own merits. Without prejudice to the rights and contentions of the Municipal Corporation, the Municipal Corporation is directed to de-seal the suit premises and hand over possession thereof to the appellants during the pendency of the said notice of motion. It is made clear that this order passed by this Court shall be treated as an *ad-interim* order which shall be subject to the final outcome of the draft notice of motion already filed by the appellants before the learned trial Court in L.C. Suit No.349 of 2016 for de-sealing of the suit premises and shall be in force during the pendency of the said notice of motion and for a period of two weeks thereafter.

9. The Municipal Corporation is directed to file an affidavit in reply in the said draft notice of motion within two weeks from today

and shall serve a copy thereof upon the appellants' advocate simultaneously. Re-joinder, if any, shall be filed within one week from the date of service of the affidavit in reply by the appellants.

10. The learned trial Judge shall make an endeavor to dispose of the notice of motion filed by the appellants for de-sealing of the suit premises within three months from the date of completion of the pleadings in the notice of motion. It is made clear that during the pendency of the notice of motion, the appellants shall not create any third party rights in the suit premises. The learned trial Judge shall dispose of the said notice of motion in accordance with law and without being influenced by the rejection of the notice of motion, which is the subject matter of this appeal.

11. The Municipal Corporation is directed to de-seal the premises by 3:00 p.m. on 18th February, 2016.

12. The appeal from order is accordingly disposed of in aforesaid terms.

13. In view of the disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

14. Parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)