

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

WRIT PETITION NO. 11982 OF 2015

M.S.R.T. Corporation,
Bombay Central, Mumbai – 8.

... Petitioner

v/s

1. Viva Holding,
Office at Thakur Arcade,
1st flr., Station Rd., Virar (W).

2. Vasai Virar Municipal Corpn.,
Virar (E), Thane – 401 305.

... Respondents

Mr.G.S.Hegde along with Ms.Pinky Bhansali i/by G.S. Hegde &
Asso. For the petitioner.

Mr.A.G. Damle, senior advocate along with Swati Sagvekar for Resp.
No.1.

Mr.Rajesh Datar along with Hemant Ghadigaonkar for Resp. No.2.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Respondents waive
service. Taken up for final disposal by consent of the parties.

2 The Petitioner challenges the order passed by the learned District Judge, Vasai, dated 10 February 2014, allowing the miscellaneous appeal filed by Respondent No.1 and setting aside the order passed by the learned Civil Judge, Junior Division, Vasai. As a consequence of the impugned order, the Petitioner is directed to demolish the brick wall constructed by the Petitioner. The suit is filed by Respondent No.1/Plaintiff seeking a direction to the Petitioner to renew the lease dated 17 November 2008 and for an order of injunction to restrain the Petitioner from terminating the lease. In this suit, an application was taken out by the Respondent under Exh.5 for restraining the Petitioner from terminating the lease and since during the pendency of the suit, wall was put up by the Petitioner, to demolish the said wall. The learned Civil Judge, by the order dated 11 December 2013, rejected both the applications below Exh. Nos.5 and 18. As against this order, the Respondent No.1 filed Miscellaneous Civil Appeal No.2 of 2014 in the Court of District Judge, Vasai. The learned District Judge, after hearing both sides, allowed the miscellaneous civil appeal by the impugned order.

3 Heard learned counsel for the parties.

4 Learned counsel for the Petitioner firstly submitted that there is no positive direction to remove the brick wall and only the civil appeal is allowed. However, this will not take the case of the Petitioner any further, as in the memo of the appeal, such direction

for demolition of the brick wall was prayed, which has been granted.

5 The suit filed, based on the lease agreement dated 17 November 2008 is pending. It is the case of the Respondent No.1 that though the period of five years is specified in the lease. Perusal of the lease would indicate that the renewal is only a formality and the lease has to be renewed on terms and conditions which the parties would agree. Learned counsel for the Respondent No.1 submitted that this is also the understanding of the Petitioner Corporation as reflected in the letter dated 14 October 2008. It is the contention of the learned counsel for the Petitioner that the person who executed the lease deed had no authority to do so and departmental proceedings have been instituted against him. It is submitted that the contention of the Respondent No.1 that the lease has to be renewed, is incorrect and there is no renewal of the lease after the period of five years.

6 The Respondents have filed a compilation and annexing the photographs of the site. The photographs indicate that the construction has substantially been carried out but it still remains in its incomplete form. The question whether the lease is perpetual as contended by the learned counsel for the Respondents, is an issue that has to be decided in the suit. *Pima facie*, reading of this lease would indicate that it is for five years and the continuation would be agreed upon mutually agreed terms. Admittedly, there has been no

renewal of the lease as on today. The question will have to be decided looking into surrounding circumstances, correspondence, etc. for determining whether the lease was perpetual or otherwise and it would be a question to be decided at the time of trial of the suit. Furthermore, the Petitioner is a public body and land is a public land. Therefore, different parameters apply for a public body to enter into lease agreements with private entities, more particularly when leases are sought to be construed, as perpetual in nature.

7 If the access is directed to be opened at this stage as sought by the Respondent, it would then carry out construction and if the Respondent No.1 creates any third party rights or houses any occupant and thereafter the suit is decided against the Respondent No.1, these occupants would face hardship apart from various other complications that may ensue. Though the learned counsel for the Respondent No.1 has submitted that no third party rights would be created and tenants would be housed, the question still remains that what would happen of these occupants, if the lease is not held to be renewed, and the access stand closed.

8 As observed above, *prima facie*, the lease appears to be of limited duration and, therefore, I am of the opinion that it would be appropriate that the interim order which is granted in this petition on 1 February 2016 staying the direction issued by the learned District Judge, is continued till the disposal of the suit and the suit is taken up

for disposal early.

9 Since the issue now concerns not only the Petitioner and the Respondent No.1, but the tenants who have vacated the area and staying elsewhere and awaiting their accommodation, it is necessary that the controversy is resolved at the earliest. It appears that the construction also has substantially come up. It is also not in the interest of anybody that the position which is as on today continued and the decision needs to be taken at the earliest.

10 In the circumstances, the writ petition is disposed of as follows. The impugned order passed by the learned District Judge, Vasai, dated 10 February 2013 is quashed and set aside. The learned Civil Judge, Junior Division, Vasai will take note of the above observations and take up the suit for consideration on priority basis and dispose of the Regular Civil Suit No.526 of 2013 within six months from the date the writ reaches the Court. Learned counsel for the parties assure that their respective clients will cooperate with the learned Judge for early disposal of the suit, and will not seek needless adjournment.

11 It is clarified that the observations made in this order and both the impugned orders are *prima facie* and the suit will be considered on its own merits.

(N. M. Jamdar, J.)