

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER St NO. 14901 OF 2016  
WITH  
CIVIL APPLICATION ST NO.14902 OF 2016**

**The State of Maharashtra & Anr.**

**..Appellants**

**Vs.**

**Disha Foundations (Regd.) & Ors.**

**..Respondents**

**Mr. A. R. Patil AGP for the Appellant / Applicant**

**Ms Sunita Poddar a/w Ms Farhana Khan for the Respondent Nos.1 to 4**

**Ms Sayli Apte i/b Mr. P. G. Lad for the Respondent No.5**

**CORAM : R. M. SAVANT, J.**

**DATE : 20<sup>th</sup> JUNE, 2016**

**Oral Order:**

1 Admit. Considering the challenge raised heard forthwith.

2 The above Appeal From Order challenges the order dated 31-3-2016 passed by the Learned Judge of the City Civil Court, Dindoshi, Borivali Division, Mumbai, by which order the Learned Judge issued a mandatory order directing the Appellant who is the Defendant No.1 to the Suit to remove the lock over the suit premises and hand over premises to the Plaintiff until further orders. Hence at the ad-interim stage the Learned Judge has passed the said mandatory order.

3 The subject matter of the Suit is the library or balwadi being pakka structure having RCC roof admeasuring about 350 sq.ft. situated at CTS

No.679 Old Police Lane, Agarkar Chowk, Andheri (E) Mumbai 400069. It seems that the said premises are situated near the other police establishments at Andheri East. In so far as the said land CTS No.679 and the adjoining land CTS No.680 are concerned, the said lands are belonging to the State Government. In so far as CTS No.679 is concerned, the said land was developed under the Slum Rehabilitation Scheme and the structure in question was put up through the agency of Mumbai Slum Improvement Board which is a regional board of MHADA, which is a local authority. With a view to utilise the said structure for the benefit of the police personnel and their family members residing in the vicinity that a gymnasium and a library was started. It seems that initially there was one Saideep Pratisthan who was given the permission to conduct the said gymnasium and library. A report has been submitted by the zonal Deputy Commissioner of Police as to how the premises have been misused by the persons who are occupying it. The said report is dated 5-10-2015. It seems that prior to the said report i.e. on 7-7-2015 probably on account of the fact that the said premises were not being used for the purposes for which they were really meant for, the possession of the said premises was taken on 7-7-2015. The instant Suit it seems was thereafter filed on 29-10-2015 and the instant Notice of Motion was moved in the said Suit.

4           It seems that the Appellant herein who is the Defendant No.1 to the Suit had filed its reply to the Notice of Motion and as also the MHADA. It

has come on record that the lands in question i.e. CTS Nos.679 and 680 are of the ownership of the Government of Maharashtra and that the plot came to be allotted to the police department for a housing scheme by the PWD authorities. It was denied that there was any allotment by the Government or the Health Ministry and that the letter relied upon by the Plaintiff is a mere recommendation. The MHADA in its reply contended that it had handed over possession to the Respondent No.1 herein i.e. the original Plaintiff on the recommendation of the local MLA.

4           The Trial Court as can be seen from the impugned order has adverted to the fact that the CTS Nos.679 and 680 are of the ownership of the Government of Maharashtra. It has however observed that the police department has no concern with CTS No.679 and have only concern with CTS No.680. This observation has been made by the Trial Court probably on the ground that the said CTS No.679 has been reserved for garden purpose though the ownership is very much of the State Government. After so observing the Trial Court has adverted to the fact that the local MLA had recommended that the library should be handed over to the Plaintiff and accordingly letter was addressed to the Executive Engineer, Mumbai Slum Improvement Board and consequently the Executive Engineer issued letter bearing No.682 of 2014 dated 27-1-2014 to the Plaintiff on certain terms and conditions. and held that the Plaintiff has been put in possession by the MHADA. The Trial Court has

thereafter only on the ground that possession was handed over to the Plaintiff has issued the mandatory order directing the Defendant No.1 i.e. the Appellant herein to remove the lock over the suit premises and hand over the possession to the Plaintiff until further orders. How such a mandatory order could have been passed at the ad-interim stage when several issues arise amongst which is the issue as to whether in the absence of any allotment by the State Government or the police department, the possession could be with the Respondent No.1 i.e. the original Plaintiff as also whether the MHADA was within its right to address the said letter dated 27-1-2014 and most importantly possession was already taken much prior to the filing of the Suit.

5           In my view therefore, the impugned order dated 31-3-2016 is required to be set aside. The parties are directed to maintain status-quo as on date. The Trial Court is directed to hear and decide the Notice of Motion filed by the Plaintiff expeditiously by giving proper opportunity to the parties. The Appeal From Order is accordingly disposed of.

6           In view of the disposal of the above Appeal From Order, the Civil Application St No.14902 of 2016 does not survive and to accordingly stand disposed of as such.

**[R.M.SAVANT, J]**

