

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

**APPEAL FROM ORDER STAMP NO.15124 OF 2016
WITH
CIVIL APPLICATION STAMP NO.15125 OF 2016**

Juleka Akbarali Shaikh : Appellant/Applicant.

Versus

The Mumbai Port Trust : Respondent.

Mr. V S Kapse for the Appellant/Applicant.

Mr. Vishal Talsania a/w Ms. Sneha Pandey i/by Motiwalla & Co. for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 14th June 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 24/05/2016 passed by the learned Judge of the City Civil Court, Greater Mumbai by which order the unregistered Notices of Motion as also Exhibit 5 filed by the Appellant – original Plaintiff came to be rejected.

2 The Appellant/Plaintiff has filed the said Notice of Motion in the suit filed by her for restraining the Defendant – the Mumbai Port Trust from demolishing or causing any damage in any way or manner whatsoever to the suit premises i.e. hut No.333, CEN No.108, P D'Mello Road, Chinch Bunder, Mumbai without following the due process of law. The cause for filing 2nd Notice of Motion was that no orders were passed on the first Notice of Motion which was filed in October 2015 and therefore the second Notice of Motion was filed on 23/05/2016. It is an undisputed position that the Plaintiff's

structure was situated on the land owned by the Mumbai Port Trust ("MPT" for short). The Plaintiff sought to rely upon various documents which were inter-alia the Pan Card, Aadhar Card, and the Notice dated 10/08/2015. The said notice was issued under bye-law 9 of the bye-laws framed by the MPT for dealing with its properties. The said bye-law 9 contemplates the removal of encroachment by issuing 12 hours notice. The notice dated 10/08/2015 issued to the hutment dwellers of plot No.108 is one such notice. The Plaintiff sought to rely upon the policy of the State Government in so far as rehabilitation of the hutment dwellers are concerned.

3 The Trial Court i.e. the learned Judge of the City Civil Court, Greater Mumbai considered the said Notices of Motion as well as Exhibit 5, and as indicated above has rejected the same by the impugned order dated 24/05/2016. The Trial Court has adverted to the fact that the demolition of the huts was carried out on 11/08/2015 and the Plaintiff has not been able to demonstrate how she has come back in possession thereafter. The Trial Court therefore observed that the Plaintiff has failed to prove her possession. The Trial Court further observed that the protection under the Slum Rehabilitation Act on the ground that the Plaintiff's structure is situated within a slum is not available in so far as the land belonging to the MPT is concerned. The Trial Court lastly observed that the encroachment upon the property of the MPT would be a loss to the port and would affect its commercial activities. The

Trial Court observed that the Plaintiff can apply for rehabilitation to the State Government if entitled to. The Trial Court ultimately held that the Plaintiff is not entitled to any discretionary reliefs as prayed for in the Notice of Motion.

4 The learned counsel appearing on behalf of the Appellant – original Plaintiff Shri V S Kapse would seek to question the notice on the ground that the notice was not individually served on the Plaintiff. It was also the submission of the learned counsel for the Appellant that the Plaintiff being on the site in question for a considerable period of time was entitled to be rehabilitated. The learned counsel for the Appellant sought to place reliance on the judgment of the Apex Court reported in (1989) 2 SCC 378 in the matter of Ram Prasad Yadav (Deceased and Bombay Mineral and Allied Industries employees Union and Bombay Coal and Coke Workers' Union v/s. Chairman, Bombay Port Trust and others.

5 Per contra, the learned counsel appearing on behalf of the Respondent No.1 Shri Vishal Talsania would contend that the aforesaid two contentions sought to be raised on behalf of the Appellant – original Plaintiff are dealt with in the order dated 30/06/1998 passed by a learned Single Judge of this Court in Appeal from Order No.216 of 1998.

6 In so far as the first ground is concerned, the learned Single Judge

has observed that it is impossible to conceive a situation where the respondents will be called upon to search for the names and addresses of every encroacher. The learned Single Judge further observed that the respondents have exercised their rights in terms of bye-law No.9 as framed by the Port Trust and therefore it cannot be said that there is no compliance of the said bye-law. In so far as the issue of rehabilitation is concerned, it seems that similar contention was sought to be raised in the said Appeal from Order. The learned Single Judge in the said context has observed that the resolution on which reliance was placed in the said case was not binding on the Bombay Port Trust, which is a Port Trust created under the Major Port Trusts Act, and if the State of Maharashtra wishes to rehabilitate any person, it is free to do so and the Port Trust is not bound to comply with the said resolution. Hence what has been held is that the policy of the State Government would not be applicable to the MPT.

7 In so far as the judgment of the Apex Court is concerned, the Apex Court in the said case whilst dealing with the removal of encroachment, had fixed a cut-off date for the rehabilitation of the encroachers who were found fit to be so rehabilitated by the Commission appointed for the said purpose, the said scheme was therefore applicable to the hutment dwellers whose case was before the Apex Court in the year 1986 and cannot be of general application to all hutment dwellers on the lands of the MPT. Hence the said judgment of the Apex Court would not aid the Appellant.

8 For the reasons afore-stated, there is no merit in the above Appeal from Order, the same is accordingly dismissed. In view of the dismissal of the above Appeal from Order, Civil Application Stamp No.15125 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]