

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

**APPEAL FROM ORDER NO.633 OF 2016
WITH
CIVIL APPLICATION NO.808 OF 2016
IN
APPEAL FROM ORDER NO.633 OF 2016**

Mrs. Nanda Dashrath Marne	...Appellant
vs.	
The Municipal Corporation of Greater Mumbai	...Respondent

Mr. R. P. Ojha for the Appellant.
Mr. Mohit Jadhav a/w Mrs. Madhuri More for the BMC.
Mr. A. A. Pande for Respondent No.2.
Mr. Vaibhav M. Parashurami for Respondent No.3.

**CORAM: G.S.KULKARNI, J.
DATE: 29th NOVEMBER, 2016.**

P.C.:-

. Heard Mr. R. P. Ojha, learned counsel for the Appellant, Mr. Mohit Jadhav, learned counsel for the Respondent/Corporation and Mr. Pande, learned counsel for Respondent No.2. and Mr. V. M. Parashurami for Respondent No.3.

2. By consent of the parties taken up for final hearing.

3. By an order dated 15/7/2016 passed by this Court the parties were directed to maintain status-quo. The dispute in the Suit before the Trial Court is as regards a stall which is being conducted by the Appellant/Plaintiff. The Appellant approached the Trial Court in the Suit in question challenging the notice issued by the Respondent/Corporation u/s.314 of the MMC Act whereby the Municipal Corporation threatened to remove the suit stall structure.

Notice of Motion No.1479/2015 was taken out by the Appellant/plaintiff praying for a temporary injunction against Respondent No.1 not to take coercive action under the impugned notice, however the same was dismissed. Hence this Appeal.

4. The contention of the Appellant/Plaintiff is that in the year 1979 the Government of India promulgated a scheme for public distribution of essential commodities that envisaged allotment of stall to the educated unemployed persons and accordingly applications were invited under the said scheme. The Appellant/Plaintiff had made an application and was allotted the suit stall in the year 1980 by Respondent No.2. At the relevant time the land on which the stall came to be allotted was belonging to Respondent No.3/MHADA. Later on the land came to be transferred in favour of Respondent No.1/Municipal Corporation.

5. The Appellant/Plaintiff has relied on documents to show that she is in possession and occupation of the suit stall since the year 1981 and that she is regularly paying the monthly rent to Respondent No.2. However the Respondent/ Corporation on a premise that the stall is not licensed by Respondent No.1/Corporation and that it is encroaching on public street/footpath, decided to initiate an action of demolition/removal of the suit stall by issuance of notice u/s.314 of the Act. The learned Judge by the impugned order on prima facie consideration of the facts and more particularly that the suit stall is not licensed by the Municipal Corporation has dismissed the Notice of Motion and denied injunctory reliefs to the Appellant/Plaintiff.

6. Heard learned counsel for the parties. With their assistance I have also perused the impugned order and the documents as placed on record. Prima facie there appears to be no dispute that the said stall was allotted to the Appellant/Plaintiff in the year 1981 and there is a scheme which was implemented by Respondent No.2 in pursuance of the Policy of the Government of India promulgated in the year 1979. It is also not a dispute that rent is regularly been paid by the Appellant to Respondent No.2. It is also not on dispute that initially the land was belonging to Respondent No.3 and later on it came to be transferred to the Respondent Municipal Corporation. It appears now it is revealed to the Municipal Corporation that the stall is affecting/encroaching a public street. Nonetheless the fact remains that for so many years i.e. from 1981 the Appellant/Plaintiff is conducting the suit stall as a source of her livelihood. What is pertinent is that Respondent No.2 and 3 were not heard when the Notice of Motion came to be decided by the learned Trial Judge. It also appears that Respondent No.2 and 3 were not called upon to file their reply to the Notice of Motion.

7. In my opinion prima facie as the facts would indicate the suit stall is not inherently unauthorized. It is in existence since more than 35 years. The Municipal Corporation has subsequently come in picture as the land initially belonged to MHADA. It appears that at the relevant time till the transfer of the land to the Municipal Corporation there was no grievance and the Appellant was permitted to conduct the said stall. In the circumstances, it would have been appropriate for the learned Trial Judge to have granted an opportunity to Respondent No.2 and 3 to file reply and thereby ought to have verified the factual position coming from their

respective records, in considering the injunction application of the Appellant/Plaintiff. However, the learned Trial Judge on the sole premise that the suit structure is not licensed proceeded to dismiss the Notice of Motion. The Appellant/Plaintiff in the circumstances has made out a prima facie case as also the balance of convenience is overwhelmingly in favour of the Appellant/Plaintiff for the grant of temporary injunctory reliefs as the possession and conducting the stall is directly affecting the Appellant/Plaintiff's livelihood.

8. In the circumstances this Appeal requires to be allowed. The impugned order dated 28/6/2016 passed by the learned Trial Judge in Notice of Motion No.1479/2015 in L.C. Suit No.1531/2015 is set aside.

9. Admittedly, by an earlier order dated 14/12/2015 in the first round in Appeal from Order No.749/2015 this Court had directed status-quo qua the suit stall/structure and the same was directed to be continued till the Notice of Motion is decided. The said protection is continued till date. It is in the interest of justice that the status quo qua the suit stall/structure which is continued till date should continue to operate till the suit is finally decided by the learned Trial Judge. Ordered accordingly. It would be open to the parties to approach the learned Trial Judge with a request to take up hearing of the Suit as expeditiously as possible. The Defendants are directed to file their respective written statements within a period of 8 weeks from today. The Appeal from Order is accordingly allowed in the above terms. No order as to costs.

(G.S.KULKARNI, J.)