

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 2425 OF 2014
IN
FIRST APPEAL NO. 963 OF 2014**

Smt. Kavita d/o Alahanna Chordekar	
@ Kavita More	... Applicant.
V/s.	
Brihanmumbai Mahanagar Palika	... Respondent

Mrs. Sunita Poddar for the applicant.
Mrs. M. R. Bhoir for the respondent/Corporation

**CORAM : K. K. TATED, J.
DATED : 08/02/2016**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for an order of injunction restraining the respondent corporation from disturbing the plaintiff's possession in respect of the suit premises being Hut No. 11 admesuring 10 X 12 ft. consisting of ground plus first floor structure situated at Bhimjyot Nagar, also known as Italiyan Building, Ghass Bazar, Sane Guruji Mar, Agripada, Mumbai – 11 or any part thereof.

3 In the present proceeding, initially the plaintiff filed L.C. Suit No. 752 of 2009 in the Bombay City Civil Court at Bombay for declaration that the notices issued by the Respondent Corporation under Section 314 read with 394 of M.M.C. Act was illegal, bad in law and void and

not enforceable. The following are the prayers of the said suit.

“(a) It be declared that the said notice No.'Nil' dated 'Nil' under Section 314 read with Section 394 of M.M.C. Act, which is signed by the Assistant Engineer (Maintenance), 'E' Ward of the Defendant on 07.03.2009 is illegal, bad in law, null, void, not enforceable;

(b) It be declared that the Defendant, its agents, servants, officers, nominees, employees and/or any person or persons claiming under or through them are not entitled to demolish, remove or in any manner disturb the suit premises, being Hut No.11 admeasuring 10' x 12' consisting of ground plus first floor structure, situated at 'Bhimjyot Nagra', also known as 'Italiyan Building Patra Shed', Ghass Bazar, Sane Guruji Marg, Agripada, Mumbai-400 011, under the guise of action under the impugned notice No.'Nil' dated 'Nil' under Section 314 read with Section 394 of M.M.C. Act, which is signed by the Assistant Engineer (Maintenance), 'E' Ward of the Defendant on 07.03.2009;

(c) That the Defendant its agents, servants, officers, nominees, employees and/or any person or persons claiming under or through them be restrained by an order and injunction of this Hon'ble Court from removing, demolishing or any manner disturbing the possession of the Plaintiff in respect of the suit premises, being Hut No.11 admeasuring 10' x 12' consisting of ground plus first floor structure, situated at 'Bhimjyot Nagar', also known as 'Italiyan Building Patra Shed', Ghass Bazar, Sane Guruji Marg, Agripada, Mumbai-400 011;

(d) That pending the hearing and final disposal of the Suit the Defendant its agents, servants, officers, nominees, employees and/or any person or persons claiming under or through them be restrained by an order and injunction of this Hon'ble Court from removing, demolishing or in any manner disturbing the possession of the Plaintiff in respect of the suit premises being Hut No.11 admeasuring 10' x 12' consisting of ground plus first floor structure, situated at 'Bhimjyot Nagar', also known as 'Italiyan Building Patra Shed', Ghass Bazar, Sane Guruji Marg, Agripada, Mumbai-

400 011;

(e) *Interim and ad-interim relief in terms of prayer (d) above be granted.*

(f) *Cost of the suit provided for;*

(g) *Such other and further relief as this Hon'ble Court may deem fit and proper to in the nature and circumstances of the suit may be granted.*

4 That suit was decided by the Trial Court after considering the evidence on record and deposition of the parties and held that the plaintiff failed to prove her case. The Trial Court by Judgment and Decree dated 13.06.2014 dismissed the suit. Hence, the plaintiff filed present First Appeal. First Appeal was admitted by this Court on 09.09.2014.

5 It is to be noted that the applicant plaintiff described the suit property in paragraph 2 of the plaint which reads thus :

“2. The plaintiff states that at Sane Guruji Marg, Agripada, Mumbai – 400 011 inside the compound of Italian Building, at Ghass Bazar there is a hutment colony by name Bhimjyot Nagar, which is also known as 'Italian Building Patra Shed' consisting of several huts. The said huts are located on set-back completely free dead-end non-use independent land causing no nuisance or obstruction to anyone including the pedestrians and vehicles. One of the said huts presently numbered as Hut No.11, admeasuring 10 ft. x 12 ft. is the suit premises herein, which consists of ground plus first floor, made up of brick masonry walls and iron channels with roof of tin sheets.”

6 Bare reading of said paragraph No. 2 shows that the applicant's/plaintiff's suit structure is inside the compound of Italian building at Ghass Bazar, Mumbai –11.

7 The learned Counsel for the applicant plaintiff filed additional affidavit dated 03.02.2015. Same is on record. It is the case of the plaintiff that the suit structure was in existence for last several years. She submits that initially the suit structure was in the name of Mrs. Jaywanta d/o Shankar Pawar. The plaintiff was residing with said Mrs. Pawar and since then she was in possession of the suit premises.

8 The learned Counsel for the applicant submits that the Special Land Acquisition Officer issued notice under Section 48(2) of Land Acquisition Act, on 14.02.1986 for acquiring suit premises. She further submits that the applicant/plaintiff made application for including her name in census of 1998. In support of this contention, she relies on application no. 0022455, which is on page 48.

9 The learned Counsel for the Applicant submits that all these documents were not considered by the Trial Court properly. She submits that the applicant was in possession of suit premises prior to 1972. Hence, pending the hearing and final disposal of First Appeal, this Hon'ble Court be pleased to grant order of injunction restraining respondent corporation from taking any action for demolition of the said structure.

10 On the other hand, the learned Counsel for the Respondent/corporation vehemently opposed the present Civil Application. The learned Counsel for the Respondent Corporation filed affidavit-in-reply dated 06.12.2014. In the said reply, the Respondent specifically stated that the suit structure was constructed by the

applicant recently on the footpath in front of Gate No.1, Italian Building, Ghass Bazar, Agripada, Mumbai – 400 011. The learned Counsel for the Respondent Corporation relied on paragraph 5 & 6 of the said reply, which reads thus:

“5) I say that these respondents received a complaint in respect of unauthorised construction of ground plus 1st floor at footpath in front of Gate No.1, Italian Building, Ghass Bazar, Sane Guruji Marg, Agripada, Mumbai – 400 011 i.e. in front of Gate No.1, Italian Building, the concerned officer of these Respondents inspected the site and it was observed that notice structure is adm. 10'X12' and is constructed on Municipal lane and accordingly, notice under Section 314 of the MMC Act bearing No. ACE/1873(a)/SR/SEM-I dt. 7.3.2009. By the said notice, the appellant was informed that she has carried out unauthorised construction on the Municipal Lane, which is in violation of the provisions of Section 313(1) of the MMC Act and carrying on the business without having valid licence from the competent authority and accordingly, directed the Appellants to remove the same. The said notice was duly served upon the appellants. I crave leave to refer to and rely upon the said notice when produced.

6 I say that in reply to the said notice, the appellants addressed a letter dated 12.03.2009 and submitted certain documents. I say that before taking further steps in the matter, the appellants filed suit in the City Civil Court inter alia praying for declaration of the said notice is illegal and unexecutable in law. I say that as per the notice under Section 314 of the MMC Act these respondents are empowered to remove without notice anything erected, deposited upon any street or upon channel, drain or well anything on the street or in public place any stall or other things so Second Appeal to form obstruction thereto or encroachment thereto. I say that as per the notice under Section 313(1) of the MMC Act no person shall except with the written permission of the Commissioner to erect anything on the street or any public street and as the appellants has

constructed the structure adm about 10' X 12' consisting of ground plus 1st floor on footpath which is obstruction to the public at large and therefore, these respondents issue notice under Section 354 of the MMC Act directing the Appellants to remove the illegal construction on the Municipal land and viz. Empowered to issue such notice. I say that the Hon'ble City Civil Court, after perusing the statements, submissions and documents produced by the appellants rightly dismissed the suit."

11 The learned Counsel for the Respondent Corporation submits that the description given by the applicant of the suit premises in plaint and other documents is different from place to place. She submits that in plaint the description given by the applicant is altogether different as stated by them in their evidence before the Trial Court. She submits that in plaint, applicant stated that her structure is within the compound of Italian Building, whereas in her affidavit of examination in chief dated 22.10.2011 in paragraph 3, it is stated that same is outside the compound of Italian Building.

13 The learned Counsel for the Respondent further submits that as the suit premises on the footpath, the same is obstructing the public at large and therefore, respondents-corporation issued notice under Section 314 of M.M.C. Act for directing the applicant to remove the said illegal construction which is on municipal land. She submits that as suit premises situated on the footpath, this Hon'ble Court not to grant any relief and Civil Application to be dismissed with costs.

14 I heard both the sides at length. It is to be noted that in the present proceeding, it is the case of the Plaintiff that suit premises is

situated inside the compound of Italian building at Ghass Bazar. Whereas, it is the case of the Respondent Corporation that the suit premises is situated on footpath. If the suit premises is situated on footpath, then there is no question of granting any relief in favour of applicant.

15 Considering these facts, I am of the opinion that if the suit structure is on footpath, then Respondent Corporation is entitled to remove the same as per their notice under Section 314 of M.M.C. Act. If it is found to the Officer of the Corporation that the suit structure is inside the compound wall of Italian Building then they have no rights to remove the same.

16 Hence, following order is passed:

- a) The Respondent Corporation is restrained from removing the structure which is in possession of the applicant, if the same is situated inside the compound of the Italian Building till the hearing and final disposal of the First Appeal.
- b) If the suit structure is on footpath as stated by the Corporation in their affidavit-in-reply dated 06.12.2014 in paragraphs 5 & 6, they can demolish the same.
- c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)