

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 107 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 143 OF 2016****IN****APPEAL FROM ORDER NO. 107 OF 2016****St.Anthony's Homes Cooperative Society Limited Appellant****VERSUS****The Brihanmumbai Mahanagar Palika & Ors. Respondents**

Ms.R.S.Pandit for the Appellant.

Mr.A.V.Diwate for Respondent No.1/B.M.C.

Mr.G.S.Godbole, a/w. Mr.U.Mahajan, Ms.Ashwini Pawar, i/b. Divekar & CO. for Respondent Nos.2 to 5.

CORAM : R.D. DHANUKA, J.**DATED : 8th FEBRUARY, 2016****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned trial judge refusing to grant any ad-interim relief in favour of the appellant (original plaintiff) in the notice of motion in which the appellant had prayed for injunction against the respondents and more particularly against the developer from carrying out any demolition and/or any development on the suit plot.

2. It is the case of the appellant that pursuant to the lease deed granted in favour of respondent nos. 2 and 3 subject to various conditions, respondent nos. 2 and 3 have constructed three row houses on the suit plot. Learned counsel appearing for the appellant submits that the respondent nos. 2 and 3 had given

undertaking to the society which are on pages 107 and 110 of the appeal paper book. It is submitted that when such undertakings were given by the respondent nos. 2 and 3, admittedly there was no litigation between the tenants of the respondent nos. 2 and 3 who were tenants in row house nos. 2 and 3 with the respondent nos. 2 and 3. She submits that now there appears to be some disputes between respondent nos. 2 and 3 and their tenants occupying the row house nos. 2 and 3. It is submitted that the respondent nos. 2 and 3 were liable to obtain further NOC from the society in view of the dispute between the respondent nos. 2 and 3 and their respective tenants. It is submitted that respondent nos. 2 and 3 have committed breach of such undertaking given to the appellant society and thus cannot be allowed to demolish row house no.1 or other two row houses and/or carry out any further development on the suit plot.

3. Mr.Godbole, learned counsel appearing for the respondent nos. 2 and 3 invited my attention to the undertakings executed by the respondent nos. 2 and 3 in favour of the appellant and would submit that admittedly the appellant is not the owner of the suit structure but is concerned only with the suit plot on which these structures were constructed by the respondent nos. 2 and 3. He submits that the respondent nos. 2 and 3 have already complied with the terms and conditions of the NOC granted by the appellant and have not committed any breaches. He submits that more than 90% of the row house no.1 has been already demolished by the respondent nos. 2 and 3. Insofar as row house nos. 2 and 3 are concerned, the same are occupied by the tenants.

4. He submits that in the said undertaking given by the respondent nos. 2 and 3, respondent nos. 2 and 3 have already undertaken to indemnify the appellant society in the event of any dispute,demand, claim or litigation between respondent

nos. 2 and 3 and their tenants. He submits that the appellant thus cannot seek any injunction against respondent nos. 2 and 3 from demolishing the suit structure or from carrying out any development in the suit property.

5. It is submitted by the learned counsel that the learned trial judge has considered all these aspects and has passed a detailed order and thus does not require any interference by this court.

6. With the assistance of the learned counsel, I have perused the undertakings given by the respondent nos. 2 and 3 in favour of the appellant. In my prima facie view the undertakings submitted by the respondent nos. 2 and 3 does not provide that if there was any dispute between the respondent nos. 2 and 3 with their tenants, the respondent nos. 2 and 3 were under an obligation to obtain NOC and consent of the appellant society for carrying out any demolition and/or for carrying out any construction on the suit plot. A perusal of clause 7 of the undertaking clearly indicates that the respondent nos.2 and 3 have already undertaken to indemnify the appellant society for any loss suffered by the appellant if any, in the event of any dispute, demand, claim or litigation between the respondent nos. 2 and 3 and their tenants occupying row house nos. 2 and 3.

7. It is not in dispute that the respondent nos. 2 and 3 have already demolished more than 90% of row house no.1.

8. In my view, no case is thus made out by the appellant for interference with the order passed by the learned trial judge. It is however made clear that the observations made by the learned trial judge in the impugned order are prima facie. The observations made by this court are for the purpose of deciding this

appeal from order. The learned trial judge shall decide the notice of motion without being influenced by the observations made by the learned trial judge as well as by this court and on its own merits.

9. Appeal from order is devoid of merits and is dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]