

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

**APPEAL FROM ORDER NO.167 OF 2014
along with
CIVIL APPLICATION NO.195 OF 2014
in
APPEAL FROM ORDER NO.167 OF 2014**

Gajanan Chawl, Rahivasi Seva Sangh .. Appellant/Applicant
Vs.
Dy.Collector (ENC) Malad & Ors. .. Respondents

Mr.Girish Godbole a/w Mr.Sandeep Mahadik i/by Mr.Manoj Upadhay
for the appellant/applicant.

Mr.Rajan Pawar, AGP for the respondent nos.1 and 2.

Ms.P.P. Anklesharia, Senior Advocate a/w Mr.P.G. Lad for the
respondent no.3-MHADA.

CORAM : R.D. DHANUKA, J.
DATE : 11th January 2016

P.C.

. By this appeal from order, the appellant has impugned the order dated 30th September 2013 passed by the learned trial Judge dismissing the notice of motion filed by the appellant (original plaintiff) by which the appellant had inter alia prayed for an order and injunction against the respondents from putting up any type of patra wall or compound wall or placing the sheets at the behest of the private developer or otherwise, over the land where the suit structures were situated.

2. It is not in dispute that the suit structures were already demolished as far back as 6th November 2012. The appellant, thereafter, filed a suit before the City Civil Court and prayed for an order and direction against the respondents to re-construct the structures of the

members of the appellant which were demolished by them and also sought permanent order and injunction against the respondents from putting up any type of patra wall or compound wall or placing the sheets at the behest of the private developer.

3. A perusal of the order passed by the learned trial Judge indicates that the notice of motion is dismissed on the ground that the appellant had not given any description or particular of the structures alleged to have been occupied by the appellant.

4. Learned trial Judge has already refused the ad-interim relief as far back as 6th November 2012. The impugned order was passed by the learned trial Judge on 30th September 2013. This Court has not granted any ad-interim relief in favour of the appellant. The respondents have already filed written statement before the learned trial Judge.

5. A perusal of the reliefs claimed in the notice of motion even otherwise could not have been granted by the learned trial Judge in the facts and circumstances of this case. If the appellant succeeds in the suit, appropriate orders can be passed by the learned trial Judge.

6. I have perused the affidavit-in-reply filed by the respondents in this appeal. I am of the prima facie view that the appellant failed to establish that the members of the appellant were occupying the respective huts on the date of demolition of those structures by the respondents. A perusal of the plaint filed by the appellant indicates that the description of the suit property is also totally vague.

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

8. It is made clear that the observations made by the learned trial Judge in the impugned order and by this Court in this order are tentative. Learned trial Judge shall decide the suit on its own merits without being influenced by the observations made by the trial Court and by this Court.

R.D. DHANUKA, J.