

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

***APPEAL FROM ORDER NO.8 OF 2016
along with
CIVIL APPLICATION NO.12 OF 2016
in
APPEAL FROM ORDER NO.8 OF 2016***

Maharashtra Samaj Ghatkopar .. Appellant/Applicant
Vs.
Municipal Corporation of Gr.Mumbai .. Respondent

Mr.G.V. Murti a/w Mr.M.Rao i/by M/s.MSR & Associates for the
appellant/applicant.

Mr.N.V. Walawalkar, Senior Advocate a/w Mr.S.R.Sonawane a/w
Mr.A.V. Diwate for the respondent-MMC.

***CORAM : R.D. DHANUKA, J.
DATE : 15th February 2016***

P.C.

. By this appeal from order, the appellant has impugned the order dated 2nd December 2015 passed by the learned trial Judge refusing to grant injunction in the notice of motion filed by the appellant (original plaintiff) inter alia praying for an injunction against the respondent (original defendant) from implementation or execution of the impugned letter-cum-order dated 1st August 2015 passed by the additional Municipal Commissioner and directing the appellant to hand over possession of the suit property.

2. It is the case of the Municipal Corporation that the suit plot is reserved for garden. The Municipal Corporation had invited applications for maintenance of garden on adoption basis concerning the suit plot admeasuring 3596 sq.mtrs. The appellant (original plaintiff)

applied for taking suit plot on adoption basis for maintenance of garden. The Municipal Corporation accordingly allotted the said plot for maintenance of the said plot as a garden for a period of 5 years from 1st January 2009 to 31st December 2014.

3. It is not in dispute that the appellant thereafter applied for extension of the said allotment period which application was already rejected by the Municipal Corporation on 9th July 2015. Since the Municipal Corporation proposed to take possession of the suit property, the appellant herein filed a suit inter alia praying for an injunction. The Municipal Corporation has heard the representatives of the plaintiff-trust and passed an order on 9th July 2015. According to the Corporation, the plot is required for the public purpose i.e. "Theme Garden." It is also the case of the Municipal Corporation that the work of Dr.Keshavrao Hedgewar Udyan is in progress and the theme of the garden is "Phases of Moon."

4. Mr.Murti, learned counsel appearing for the appellant invited my attention to the Circular issued by the Municipal Corporation on 16th January 2009 wherein the policy guidelines were processed of handling the cases in view of the stay granted by the State Government thereby staying the entire R.G./P.G. Policy. It is submitted by the learned counsel that under the said policy framed by the Municipal Corporation, in view of the stay granted by the State Government, the Municipal Corporation was bound to permit the appellant to continue to maintain the said garden till the said stay was lifted. He submits that in the locality where the appellant is running the school, there is no playground. He submits that the order passed by the Additional Municipal Commissioner

on 9th July 2015 is contrary to the Circular issued by the Municipal Corporation itself.

5. It is not in dispute that the appellant was allotted the said plot only for the purpose of maintenance of the garden on adoption basis for a period of 5 years from 1st January 2009 to 31st December 2014. The said period has admittedly expired. The application of the appellant for extension of the said arrangement has been rejected.

6. The Municipal Corporation requires the said plot for construction of theme garden. A perusal of the record indicates that the said plot is reserved for garden and not for any playground. I am thus not inclined to accept the submission of Mr.Murti, learned counsel for the appellant that the said plot was handed over to the appellant for use as playground. In my view, the Municipal Corporation is thus entitled to use the said plot for the purpose of theme garden as the said plot is reserved for garden. In my view, after expiry of the contractual period of 5 years for the purpose of maintenance of the garden, the appellant did not have right, title and interest of any nature whatsoever in the suit plot.

7. In so far as the submission of the learned counsel for the appellant that in view of the policy framed by the Municipal Corporation, the arrangement made with the Corporation could not have been disturbed and the appellant cannot be called upon to surrender the possession of the suit plot is concerned, it is not in dispute that the said policy was in force even when the appellant was allotted the said plot

for the purpose of maintenance of the garden. In my view, the said circular issued by the Municipal Corporation does not create any right in favour of the appellant for the purpose of seeking extension of arrangement arrived at between the parties. The said arrangement had come to an end. On the contrary, the said circular would indicate that the State Government had granted stay of the said R.G./P.G. Policy. In my view, the impugned order passed by the learned trial Judge which is after considering all the submissions made by both the parties and considering the policy framed by the Municipal Corporation thus does not require any interference. 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. At the request of the learned counsel for the appellant, interim protection granted by this Court to continue for a period of four weeks from today.

R.D. DHANUKA, J.