

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.2371 OF 2011
WITH
CHAMBER SUMMONS NO.159 OF 2016
IN
SUIT NO.1975 OF 2011**

Pankj Unit No.1 Housing Development)
Co.Pvt. Ltd. & Ors.)....Plaintiffs

V/s.

Oshiwara Land Development Co. Pvt. Ltd)
And Municipal Corporation of Gr.Mumbai)....Defendants

Mr.Sharan Jagtiani i/by Kunal Bhanage for plaintiffs.

Ms.Priyanka Kothari a/w Ms.Neha Bhat i/by M/s.Bilawala & Co. for
defendant no.1.

Mr.Aditya Shiralkar i/by Nitin Gandhi for defendant no.2.

Mr.S.J.Bambhloni a/w Ms.Shilpa Upadhyay and Mr.Ravi Sirsikar for
applicant in CHS No.159 of 2016 (for MCGM).

**CORAM : K.R.SHRIRAM,J
DATE : 17.11.2016**

P.C.:- NOTICE OF MOTION NO.2371/2011

1 The counsel for the applicants states that ad-interim order was passed on 29.8.2011 read with order dated 12.9.2011 whereby the defendant was directed not to dispose off, alienate, encumber, part with possession and create any 3rd party interest in respect of the property because prima facie, the Court observed that the entire consideration has been paid by the plaintiffs and the same has been admitted by the defendant, inter alia, before the Income-tax authority. Shri Jagtiani for the plaintiffs states that the plaintiffs are in

possession of the suit property and therefore, this order could be continued as order in the Notice of Motion and Notice of Motion be disposed.

2 When the ad-interim order was passed, there was only one defendant. Thereafter plaintiff no.3 was substituted as defendant no.2. The main contesting defendant therefore, is defendant no.1.

3 Shri Aditya Shiralkar appearing for defendant no.2 states that they are supporting the plaintiffs and therefore, question of filing written statement does not arise. Ms.Kothari appearing for defendant no.1 states that written statement of defendant no.1 has already been filed and copy served upon the plaintiffs.

4 In my view, since the ad-interim order has been in force for more than 5 years and the Court has observed that prima facie consideration has been paid to defendant no.1 and the possession is still with the plaintiffs, the ad-interim order could be continued as an order in the Notice of Motion and the suit be proceeded with.

5 In the circumstances, the order passed on 29.8.2011 read with order dated 12.9.2011 is made an order in the Notice of Motion and the Notice of Motion is accordingly disposed.

CHAMBER SUMMONS NO.159 OF 2016

1 Municipal Corporation of Greater Mumbai has taken out this Chamber summons to be impleaded as a party to the suit and to direct the plaintiffs/defendants to hand over 8173 sq. mtrs. of suit land for construction of storm water pumping station. The counsel for the applicants states that 8173 sq. mtrs. has now gone up to 11,253 sq. mtrs.

2 The counsel submitted that they are unable to take possession because of the order of ad-interim injunction passed in the plaintiffs' Notice of Motion No.2371 of 2011.

3 I have considered the ad-interim order and the ad-interim order is only restraining defendant no.1 from disposing of or creating any 3rd party rights on the suit property. Therefore, applicants in this Chamber summons cannot say that the order is an impediment in the applicants taking steps in accordance with law. The relief as sought in the chamber summons, therefore, need not be granted. Chamber summons accordingly disposed.

4 It is clarified, however, that the applicants may take such steps as necessary in accordance with law. If and when the said procedure is completed and the issue as to payment of

compensation comes up, in view of the pendency of this suit, the Bombay Municipal Corporation will deposit the amount of compensation as finally determined with the Prothonotary & Senior Master, High Court, Bombay to the credit of this suit. Prothonotary & Senior Master will invest the same in a fixed deposit with a nationalized bank for a period of one year initially and renew it year to year until the hearing and final disposal of this suit.

5 This order is passed without prejudice to the rights and contentions of the plaintiffs and the defendants in the suit including challenging the acquisition process that may be commenced by the Corporation. At the end of it if corporation ends up depositing any compensation as stated above, it will be open to the parties to take out such application as advised at that stage for withdrawal of the amount deposited by the Corporation. As and when such an application is taken out, the Court will consider the same on merits.

6 Since the pleadings in the suit are complete, the suit be listed for issues on 19.12.2016. In the meanwhile, parties to file their respective affidavit of documents, complete discovery and inspection and also exchange statement of admission and denial with reasons for denial.

(K.R.SHRIRAM,J)