

Anand

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

WRIT PETITION NO.3253 OF 2016

Aziz Ur Rehman .Petitioner

Vs.

The Maharashtra Housing And Area Development .Respondents
Board & anr.

Mr.D.J.Lulia, Advocate, for the Petitioner
Mr.P.G.Lad, Advocate, for the Respondent No.1

CORAM : R.G.KETKAR, J.

DATE : 16.03.2017

P.C.

. Mr. Lulia, learned counsel for the Petitioner and Mr. Lad,
learned counsel for the Respondent No.1 at length.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 31.10.2015 passed by the learned Judge, City Civil Court, Bombay in Notice of Motion No.2833 of 2015 in S.C.Suit No.2448 of 2009. By that order, the learned trial Judge dismissed Notice of Motion taken out by the Plaintiff for staying the suit till disposal of Appeal filed by the two tenants before the Vice President

of the first Respondent.

3. In support of this Petition, Mr. Lulia submitted that by Order dated 09.06.2010, the Defendants were directed to give an opportunity to both the tenants to explain their entitlement for new premises. He submitted that the Appeal is preferred in the year 2015 and till date, it is not decided. Decision of the Appeal will have bearing in the suit. It is, therefore, necessary to stay the suit pending disposal of the Appeal pending before the Vice President. He has taken me through the Affidavit in support of Notice of Motion. In particular, in paragraph 8, it is contended that surrender of surplus area to the Defendants by the Plaintiff will depend upon whether Defendants are accepting tender of the two tenants which issue is pending in the Appeal. The decision of eligibility of tender of two tenants is vital in the suit and also decide how much surplus area Plaintiff is required to surrender to the Defendants.

4. On the other hand, Mr. Lad supported the impugned Order. He submitted that the issue raised in the suit and the issue raised in the Appeal is totally different. In short, the issue is not directly and substantially in the issue in the suit filed by the Plaintiff.

5. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. The Plaintiff has instituted suit inter alia praying for declaration that the letter dated 30.10.2009 in respect of the suit premises i. e. land bearing Cadastral Survey No.336 of Matunga Division, Ward No.FN-4185(1), Bldg./Street No.1426 Madhli Antop Hill, (Shaikh Mistry Road), Wadala, Mumbai – 400 037 is illegal, invalid, bad-in-law and for injunction restraining the Defendants, their officers, servants and agents from taking any action against the Plaintiff.

6. During the pendency of L.C.Suit No.5613 of 2005 and L.C.Suit No.5614 of 2005, it appears that by Order dated 09.06.2010, Mr.Sayyed Zuber, Deputy Engineer, Repair Board, 'F' North Ward had made a statement that the Board will decide eligibility of the two tenants for getting permanent alternate accommodation. In view thereof, by Order dated 09.06.2010, the Court directed MHADA to decide eligibility of these two tenants for getting permanent alternate accommodation. The tenants have made representation on 02.07.2010. It also appears from the record that on 26.06.2015, the claim of the tenancy was rejected. Aggrieved by that order, the tenants have filed an Appeal before the Vice President, MHADA on 30.07.2015.

7. While rejecting the Motion, the learned trial Judge dealt with question whether issue raised in the suit and the issue raised in the Appeal is directly and substantially same in both the proceedings. In paragraph 11, the learned trial Judge has observed that the parties to the proceedings are different as also the issue involved in the Appeal as also in the suit is not directly and substantially between the same parties. For the reasons recorded in paragraph 11 of the Order, I do not find that the learned Judge has committed any error while dismissing the Motion. Hence, Petition fails and same is dismissed. Having regard to the fact that the Appeal is pending since 2015, MHADA will decide the Appeal as expeditiously as possible and preferably within eight weeks from the production of the authenticated copy of this order. Order accordingly.

(R.G.KETKAR, J.)