

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

WRIT PETITION NO. 3106 OF 2015

Suresh D. Singh & Anr.

...Petitioners

Versus

Hasmukh Rajmal Hirani & Ors.

...Respondents

.....

Mr. V.Y. Sanglikar for the Petitioners.

.....

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 17, 2017**

P.C. :

1. As per the order dated 18.03.2015, this Court has indicated that the matter will be disposed of finally at the stage of admission. However, none present for the respondents.

2. This petition filed under Article 227 of the Constitution of India is directed against the order dated 22.12.2014 passed by the learned City Civil Court, Greater Mumbai rejecting the Notice of Motion No. 2923 of 2011. In the Notice of Motion, the plaintiffs had prayed that DILR/ TILR be directed to submit the report to this Court and demarcate the plaintiffs' property i.e. suit shop admeasuring 136 sq.ft and restraining defendant no.1 from doing

construction in excess area and also demanded compensation of Rs. 50,000/-.

3. The learned counsel for the petitioners submits that at this stage he restricts his prayer only for demarcation of the property through DILP/ TILR and no prayer for compensation of Rs. 50,000/- is made. He further submits the suit shop was allotted to his predecessor Smt. Khamanbai Jain by MHADA and the permission was given by MHADA to run a flour mill to his predecessor by letter dated 14.06.2005. He further submits that he has constructed the suit shop with permission of the Corporation where IOD was granted by letter dated 29.04.2006. He further submits that without any order their shop was demolished. He has also produced the approved plan of BMC showing the suit shop. He further submits that he has filed the Suit for a declaration that he is owner of the suit shop.

4. Perused the prayer made in the plaint and MOU dated 30.12.2009 between the plaintiffs and his predecessor which is in possession of the earlier allottee. There is a letter of allotment of the suit shop by MHADA dated 14.06.2005 and also the plan of

MHADA which was approved by BMC on 27.03.2008, which indicate that the suit shop is constructed.

5. None present for the respondents and therefore, the petition is partly allowed. The order dated 22.12.2014 passed by the learned City Civil Court, Greater Mumbai rejecting the prayer of appointment of DILR/ TILR for measurement is set aside and DILR/ TILR to demarcate the suit shop no. 1, situate at Plot No. 2059 near building no. 25, Nehru Nagar, Kurla (E), Mumbai as per approved plan dated 27.03.2008. DILR/TILR to take note that the suit shop is demolished and therefore, as per the plan if it can be located or not that report is to be given. Rule is made absolute to that extent.

6. Parties to act on an authenticated copy of this order.

(MRIDULA BHATKAR, J.)