

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 137 OF 2017
WITH
CIVIL APPLICATION NO. 183 OF 2017

Shankar Vasudeo Sawant	...Appellant
<i>Versus</i>	
JP Infra (Mumbai) Pvt Ltd & Ors	...Respondents

Mr Piyush Raheja, *i/b Mukesh B Naynak, for the Appellant.*
Mr Arif Bookwala, Senior Advocate, *i/b RMG Law Associates, for*
Respondent No. 1.
Mr Nikhil Patil, *i/b VP Sawant, for Respondent No. 2-MHADA.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. The order under Appeal is dated 7th February 2013. The learned Judge dismissed the Plaintiff's Notice of Motion. The Plaintiff has come in Appeal.

2. In the suit, the Plaintiff sought a decree of permanent injunction restraining the Defendants from dispossessing him from the shop premises in Gajmukh Chawl, Sarvodaynagar, Majaswadi, Jogeshwari (East), Mumbai 400 060. It is important to note that the commercial premises that are the subject matter of the suit is only

an area of 6.69 square metres outside or near Room No. 870, Chawl No. 121. The Plaintiff is admittedly a resident in Room No. 870 and there is no dispute about this. The only controversy is about the adjacent area of 6.69 sq. mtrs which the Plaintiff claims to be using as a shop.

3. Mr Raheja for the Plaintiff argues that the learned Judge failed to appreciate that as far back as in 1995, MHADA, which is Defendant No. 2, regularized this additional area by collecting an amount of Rs. 4,014/- from the Plaintiff and that MHADA has since issued receipts to the Plaintiff that indicate not only rent but also regularization charges. These documents are on record.

4. The history of development and redevelopment in this area is complex. There have been very many writ petitions and appeals filed earlier. Division Bench and learned Single Judge's orders of this Court indicate that attempts at obstructing the redevelopment have almost consistently failed. Mr Bookwala for Respondent No. 1 (the 1st Defendant before the Trial Court) points out that by an order of 10th June 2013 a Division Bench of this Court, aware of the fact that multiple litigations were being launched in different Courts, the effect of all of which was to hold up the redevelopment, directed that these controversies between the individual member of the Society or occupants could not be permitted to be re-agitated in writ petitions or suits. These directions were issued so that the entire redevelopment project was not stalled again and again.

5. I do not think it is at all reasonable to allow the entire redevelopment to be stalled on the ground that the Plaintiff is entitled to either compensation or rehabilitation of this additional area of 6.69 sq. mtrs. In fact, that cannot be the purpose of objective of any order made in any such proceedings. The rights of the Plaintiff, if any, can be perfectly well preserved by keeping open all questions as to transit and other compensation and also his eligibility, if any, to rehabilitation or re-accommodation in respect of the suit area, i.e., the commercial premises.

6. To this end, it is sufficient while dismissing this Appeal to observe that the Plaintiff will be at liberty to make an application to MHADA placing all necessary documents that are in his possession. MHADA will, having regard to these documents and the application, pass a speaking reasoned order as to whether the Plaintiff is entitled to compensation, rehabilitation or both. That application is to be made within four weeks from today. MHADA will take its decision within six weeks thereafter.

7. All rights and contentions are expressly kept open.

8. The Appeal from Order and the Civil Application are both disposed of with these observations. There will be no order as to costs.

(G. S. PATEL, J)