

HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 674 OF 2015****WITH****CIVIL APPLICATION NO. 826 OF 2015****WITH****CIVIL APPLICATION NO. 562 OF 2016****WITH****CIVIL APPLICATION NO. 1055 OF 2016****WITH****CIVIL APPLICATION (ST) NO. 32708 OF 2016 (Not on board)**

Maharashtra Rajya Machhimar Sahakari
Sangh, Mumbai

...Appellant

Vs.

The Municipal Commissioner and Anr.

...Respondents

Mr.Ashutosh Kumbhakoni, Senior Advocate I/b.B.K. Raje for Appellant.

Mr.Bharat Chandari with Mrs.M.R. Bhoir for Respondents / MCGM.

Mr.Pratik Shah for Applicant in CAA 1055/2016.

Mr.Pravin Samdhani, Senior Advocate with Sharad Wakchoure I/b Kishore
Thakordas & Co. for Intervenor / Applicant in CAAST 32708/2016.

CORAM : S.C. GUPTE, J.

25 APRIL 2017

P.C. :

The AO challenges an order passed by the City Civil Court at Bombay rejecting the Appellant's (original Plaintiff's) notice of motion. The Plaintiff's suit seeks a perpetual injunction against the Defendant Municipal Corporation from developing the suit property and also restraining the Defendant Corporation from accepting any rent / compensation from tenants of the suit property on the basis of attornment. The notice of

motion seeks temporary injunction in terms of the perpetual injunction sought in the suit.

2 The Plaintiff claims possession of the suit property described in para 2 of the plaint. This property is admittedly owned by the Defendant Corporation. In the year 1950, a vacant land tenancy in respect of this property was granted by the Defendant Corporation to the Plaintiff. A building was constructed by the Plaintiff on the property. The building is currently occupied by various tenants as well as illegal occupants. Under its declared policy, the Defendant Corporation has accepted attornment of tenancy by these occupants and after terminating the vacant land vacancy, the Corporation proposes to have the suit property developed under Regulation 33(7) of the Development Control Regulations. The suit seeks to injunct the Defendant Corporation from doing so.

3 It is not in dispute that the vacant land tenancy in respect of the suit property claimed by the Plaintiff is not governed by the Rent Act. It is also not in dispute that the Plaintiff has constructed in the suit property a ground plus two storey building, which is in breach of the vacant land tenancy agreement. It is further not in dispute that many rooms constructed in the suit property have been occupied by illegal occupants and encroachers, whilst other rooms have been occupied by tenants of the Plaintiff. It is also not in dispute that the vacant land tenancy agreement did not permit the Plaintiff to create any tenancy over any construction on the suit property. On these facts, the trial court has come to the conclusion that the Plaintiff has not shown any legal right in its favour to stop the development work on the suit property, which is in accordance with the law and procedure prescribed under the Mumbai Municipal Corporation

Act read with the Development Control Regulations applying to the city of Mumbai. The trial court, in the premises, rejected the Plaintiff's notice of motion.

4 No infirmity could be pointed out as such by learned Counsel for the Appellant in the impugned order passed by the trial court.

5 Learned Counsel for the Appellant (original Plaintiff), however, submits that even though no fault can be found in the termination of the vacant land tenancy in itself, it is a matter of fact that the building is owned by the Plaintiff and besides owning this building, the Plaintiff also occupies a particular room in the building. As for the Plaintiff's occupation, it is an admitted position that in the redevelopment project, the Municipal Corporation has offered a suitable permanent alternative occupation to the Plaintiff in lieu of that room. As for the ownership of the building, considering that the vacant land tenancy has been validly terminated by the Defendant Corporation (there is in fact an eviction proceeding filed by the Corporation against the Plaintiff), the grievance can be addressed by allowing the Plaintiff to take away the salvage of the building constructed within the suit property as and when the same is demolished for the purpose of the proposed development.

6 In the premises, there is no merit in the appeal. The appeal from order is dismissed. It is, however, directed that the Appellant shall be entitled to the salvage of the building after the same is demolished by the Defendant Corporation in pursuance of the redevelopment project proposed under Regulation 33(7).

7 In view of the dismissal of the AO, the civil applications do not survive and the same are also disposed of.

(S.C. GUPTE, J.)