

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 652 OF 2015
AND
CIVIL APPLICATION NO. 806 OF 2015

Manish P. Bane

.. Appellant

vs.

Maharashtra Housing and Area
Development Board

.. Respondent

Mr. Sanjiv A. Sawant for the Appellant.

CORAM : M. S. SONAK, J.

DATE : 04 JANUARY 2017.

P.C. :-

1] This appeal is against the order dated 16 April 2015, by which, learned Trial Judge has dismissed the appellant's notice of motion seeking restraint upon execution upon the orders dated 23 November 2011 and 1 March 2014 made by the authorities in relation to the suit premises.

2] Mr. Sawant, learned counsel for the appellant, submits that the tenancy of the appellant in respect of the suit structure is *prima facie* established on the basis of endorsement made by the Deputy Chief Officer of the MHADA. Besides, Mr. Sawant submits that as per the policy of the MHADA, all persons at the site are entitled to permanent alternate accommodation. Mr. Sawant submits that the appellant is raising no dispute insofar as the acquisition of the land is concerned. He however, submits that the claim of the appellant is restricted to the structure thereon and the rights are claimed in respect of the structure and not the land.

3] Upon due consideration of the aforesaid submissions and upon perusal of the material on record, in my judgment, there is no case made out to interfere with the impugned order. The learned Trial Judge has explained and appreciated the circumstances in which the Deputy Chief Officer made endorsement on certain documents. It is rightly held that no *prima-facie* case can be said to have been made out on the basis of such endorsement. The record indicates that in the original list the name of the appellant did not find place. The appellant claims interest in the suit structure on the basis of some affidavit-cum-declaration executed by one Shri.Chandrakant Lamge on 26 July 2004. Upon acquisition of the property, the same vests free of encumbrances in the State Government. In such a situation, it cannot be said that Shri.Chandrakant Lamge, at least *prima-facie*, had in right, title or interest in the structure, which he could have assigned to the appellant. There is also the issue of registration and consequently the reliance that can really be placed upon the affidavit-cum-declaration dated 27 July 2004, which according to appellant is required to be elevated to the status of the conveyance between Lamge and himself. For all these reasons, there is no case made out to fault with the finding recorded by the learned Trial Judge that the appellant has failed to make out any *prima-facie* case.

4] Apart from the aforesaid, in the matter of this nature, even the balance of convenience is not in favour of grant of any interim relief. The appellant cannot insist upon continuing in the suit structure, until the issue of permanent accommodation is decided. Such continuance is bound to effect the redevelopment at site. Instead, if the appellant, in the suit ultimately succeeds in establishing that he

had some rights in the suit structure, which entitle him to the award of permanent accommodation, such relief can always be claimed and if entitled, be granted. This is an additional reason, which warrants no interference with the impugned order. Accordingly, it is clarified that the issue of entitlement of the appellant to permanent alternate accommodation will be decided by the appropriate authorities on its own merits and in accordance with law.

5] The observations in the impugned order and for that matter in the present order are only *prima-facie* and the Civil Court or any other authority empowered to decide the issue entitlement, need not be influenced by the observations. All contention of all parties are therefore, kept open.

6] Subject to the aforesaid observations, this appeal is dismissed. There shall be no order as to costs.

7] In view of the disposal of the main appeal, the civil application does not survive and is disposed of.

(M. S. SONAK, J.)

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