

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 689 OF 2014
WITH
CIVIL APPLICATION NO. 826 OF 2014
AND
CIVIL APPLICATION NO. 1250 OF 2014

Mr. Shaikh Jumman Jariwala .. Appellant
vs.
Pioneer India Development (P) Ltd.
& Ors. .. Respondents

Mr. J. N. Jayale for Appellant.
Mr. A. R. Mishra for Respondent No. 2.
Mr. Ganesh Jahdavi h/f. D. A. Nalawade for Respondent No. 3.
Mr. A. A. Palkar – AGP for State – Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 06 JANUARY 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] This appeal is directed against the order dated 2 April 2014 made by the City Civil Court at Dindoshi (trial Court) dismissing the appellant's notice of motion seeking injunction against the respondents from demolishing / disturbing appellant's lawful occupation and possession of the suit premises.
- 3] Mr. Jayale, learned counsel for the appellant submits that the appellant was possessed of two separate structures being room nos. 3 and 4. One of the structure was used for residential

purposes. The same has already been demolished and in lieu of such demolition, the appellant has already been provided with permanent alternate accommodation. Mr. Jayale however submits that in respect of the second structure, which was used for commercial purposes, there is no offer for providing any permanent alternate accommodation, in case, the respondent authorities really require the said structure for the purposes of redevelopment. Mr. Jayale points out that in any case, this second structure, which is the subject matter of the suit, is in fact situated in the property belonging to the neighbouring co-operative housing society. He points out that the society had instituted a suit against the appellant seeking eviction and recovery of possession. The suit has been decreed. The appellant has instituted an appeal against such decree and the execution of such decree is stayed. For these reasons, learned counsel for the appellant submits that the respondent authorities are not entitled to demolish this structure or to disturb the appellant's possession in respect of the said structure.

4] Learned counsel for the respondents submit that in the suit instituted by the society, the appellant had taken the defence that the structure is not situated on the property of the society but rather, the same is situated on the road and the society has no

locus standi to seek any recovery of possession. They submit that in fact the suit structure was not an independent or separate structure but the same was merely an unauthorised extension to the single structure, which has already been demolished and in lieu of such demolition, the appellant has already been granted a permanent alternate accommodation. They submit that the appellant is trying to take undue advantage of the fact that the society has instituted a suit against him and on the said basis, seeking some protection to the unauthorised portion of the earlier structure. For this reason, they submit that there is no case made out by the appellant for grant of any protective reliefs.

5] I have considered the rival contentions. I have also perused the impugned order and the material on record. The learned trial Court, upon analyzing the material on record has arrived at a *prima facie* finding that the structure in respect of which the appellant seeks protection, was nothing but an unauthorised extension of the original structure for which, the appellant has already been provided with permanent alternate accommodation. On the basis of the material on record, it cannot be said that such a finding is vitiated by either perversity or unreasonableness.

6] Admittedly, the appellant has already been provided with permanent alternate accommodation in respect of the structure

which has already been demolished. In the written statement filed by and on behalf of the appellant in the suit instituted by the society, the appellant has contended that the structure falls on the road and beyond the property claimed by the society. In these proceedings, however, the appellant contends that the suit structure falls in the society's property and therefore respondents have no right to demolish the suit structure or use the said suit structure for the purposes of redevelopment purposes. At least *prima facie*, the appellant is approbating and reprobating in this matter. That apart, if ultimately, the appellant is able to establish that the structure in respect of which he claims protective relief was indeed an independent structure being used by him for commercial purposes and that suit structure was an authorized structure entitling him to the benefit of the permanent alternate accommodation, then, such accommodation can always be granted to the appellant. For this purpose, the appellant cannot insist that the structure should remain at the site until the issue of his entitlement for permanent alternate accommodation is decided in the suit. In the impugned order, it is observed that the appellant cannot claim any premium for the illegally making encroachments and thereafter extending the original premises.

7] No doubt, the findings referred to in the impugned order or for

that matter, in the present order, are only *prima facie*. This is a case where the appellant has failed to make out *prima facie* case. The balance of convenience is also not in favour of grant of any protective relief. If the prayers in the plaint are perused, it is seen that the appellant seeks for permanent alternate accommodation and states that until this is granted to him, the structure should not be allowed to be demolished. The issue as to whether the appellant is entitled to permanent alternate accommodation or not is yet to be decided in the suit. The appellant has already acquired a permanent alternate accommodation in so far as the structure which has already been demolished. This means that it is not as if the appellant will be on the streets in case, the present structure is demolished.

8] For the aforesaid reasons, there is no case made out to interfere with the impugned order. This appeal is accordingly dismissed. There shall be no order as to costs. Interim order, if any, stands vacated.

9] In view of dismissal of the appeal, civil applications do not survive and are disposed of accordingly.

(M. S. SONAK, J.)