

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

*APPEAL FROM ORDER (STAMP) NO.35062 OF 2016
WITH
CIVIL APPLICATION NO. 93 OF 2017*

Shri Laxmi Narayan Bagad
and others

.. Applicants.

Vs.

Nehru Nagar Vishwadham CHS Ltd.
and others

.. Respondents

...

Mr. Satyam R. Dubey, for Applicant.
Mr. Chetan C. Agrawal, for Respondent No.1.
Ms. Swati Sawant, for Respondent No.2.
Mr. S.P. Thorat, For Respondent No.3.

**CORAM : M.S. SONAK, J.
DATE : 17th MARCH 2017.**

P.C. :

1. Heard learned counsel for the parties.
2. The challenge in this appeal is to the order dated 23 September, 2016 by which learned Trial Judge has dismissed the appellant/plaintiff's Notice of Motion No. 3639/2016. In paragraph No.1 of the impugned order, the learned trial Judge has quoted the prayers set out in the notice of motion. Paragraph No.1 of the impugned order reads as under:-

“The plaintiffs have taken out this Notice of Motion claiming interim reliefs in terms of prayer clauses (a) restraining Defendant No.4, their servants and agents, or any person claiming through them from issuing any I.O.D., C.C. and or granting any permission, sanction/approval of plans in respect of suit premises situate on the plot of land bearing Survey No. 229 and 267, City Survey No. 12(PT) situate at Mauja Kurla at Nehru Nagar, Vishwadham Co-op. Housing Society Ltd., Building No.47, Nehru Nagar, Kurla (E), Mumbai 400 024; (b) restraining Defendant No.3 their officers from issuing any NOC, consent letter and or permission to Defendant Nos. 1 and 2 in respect of suit premises on above referred plot of land; (c) restraining Defendant Nos. 1 and 2 their officers from dealing with, assigning, disposing of, alienating, encumbering and/or creating any third party right in respect of any part of the suit premises and or from in any manner transferring right of development to any third party in respect of suit premises situated on above referred plot of land and; (d) for appointment of Court Receiver, High Court to take possession of the suit premises on the above referred plot of land.”

3. As on today, the building in question has been completely demolished. Further, learned counsel appearing for respondent Nos.1 and 2 state that I.O.D., C.C., N.O.C from MAHADA has already been received. Out of 40 members which comprises the society, 11 appellants and another members opposed the re-development. The rest of the members support the re-development. At this stage, most of the reliefs prayed for in the Notice of Motion have been rendered infructuous. Upon perusing the impugned order, it cannot be said that discretion

was exercised in an unreasonable manner. Balance of convenience in such a case, certainly is not in favour of motion of interim reliefs as prayed for. Accordingly, there is no case made out to interfere with the impugned order.

4. However, it is clarified that re-development shall be subject to final decision in the suit and the respondents shall not claim any equities.

5. With the aforesaid observations, the appeal is disposed of. There shall be no order as to costs.

6. Since, the suit is of the year 2014 and most of the appellants are claim to be senior citizens, the learned trial Judge shall endeavour to dispose of the suit expeditiously.

7. In view of the disposal of the Appeal, the Civil Application does not survive and the same is disposed of accordingly.

(M. S. SONAK, J.)