

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

**APPEAL FROM ORDER NO. 429 OF 2018
WITH
CIVIL APPLICATION NO. 567 OF 2018**

Rangamma Rangaswami Vardhan ... Appellant
V/s.
The Brihanmumbai Municipal Corporation ... Respondent

- Mr.Ashutosh Kaushik i/b. Kaushik & Co. for the Appellant.
- Mrs.Madhuri More for the Respondent-Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent-Corporation.

2] This Appeal takes an exception to the order dated 21/03/2018 passed by the City Civil Court, Dindoshi, Borivali Division, Mumbai, thereby dismissing Notice of Motion No. 703 of 2012 filed in L.C. Suit No. 536 of 2012.

3] This Notice of Motion was taken out by the present Appellant for restraining the Respondent-Corporation from taking any

action in pursuance to the Notice issued under Section 314 of the Mumbai Municipal Corporation Act, 1888 (*for short, "MMC Act"*).

4] According to the Appellant, he is in lawful possession of the suit premises and despite that, with some *malafide* intention, the Respondent-Corporation has earlier issued two notices to him, calling upon to vacate the said premises. He had replied the notices. Thereafter, no action was taken, thereby indicating that his contention was accepted by the Respondent-Corporation. However, thereafter again impugned Notice is issued, holding him eligible for alternate accommodation but the area of the said tenement is only 225 sq.ft. and it is situated at Dahisar Village, Rawalpada, Dahisar (E); whereas the suit premises are situated at Andheri. Therefore, according to the Appellant, alternate accommodation offered to him is not suitable to him and hence, according to him, the trial Court should have granted the relief of interim injunction restraining the Respondent-Corporation from acting on the Notice issued under Section 314 of the MMC Act.

5] Secondly, it is submitted that the suit property belongs to MHADA and therefore, the Respondent-Corporation is not competent to take any action, much less that of removal of the Appellant, from the said premises.

6] However, the impugned order passed by the trial Court clearly goes to show that the trial Court has considered all these contentions of the Appellant and the trial Court has found that the Appellant was provided alternate accommodation to the extent of his eligibility. If at all, Appellant is having any grievance pertaining to the area of the alternate accommodation or its location, these grievances will be the subject matter of the suit and at the time of hearing of the suit it may be considered whether he is entitled to more area. At that time, if he is found entitled to more area, the Respondent-Corporation may be directed to do so. But at this stage, the premises are required for public purpose. Some alternate accommodation is also allotted to him. Hence, the Appellant cannot be permitted to continue to remain thereon, so as to suffer the public cause.

7] As regards the grievance of the Appellant that the Respondent-Corporation has no authority to take action under Section 314 of the MMC Act, as it is the MHADA, which is the competent authority, needless to state that the dispute to that effect can be between the MHADA and the Corporation and not the Appellant and the Corporation. MHADA is not joined by the Appellant in the present suit. Moreover, learned counsel for the Respondent has produced on record the possession receipt showing that the possession of this

premises was handed over by the MHADA Housing Board to the Corporation. It may be true that it was subject to the prior survey, but the said handing over is of the year 1987 and whether the survey was conducted or was not conducted, the said issue is between the MHADA and the Corporation. The Appellant, who is already given the alternate accommodation, cannot raise grievance about the same in this Court. Thus, when the trial Court has properly considered all the contentions raised by the Appellant in its order, in Appeal from Order this Court cannot interfere therein.

8] As a result, the Appeal holds no merits and hence, stands dismissed.

9] In view of dismissal of the Appeal, nothing survives in the Civil Application, hence stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]