

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 14851 OF 2018
WITH
CIVIL APPLICATION (St.) No.14852 OF 2018

Jyoti Janardan Mhatre & Ors. ... Appellants
Vs.
Municipal Corporation of Gr. Mumbai & Anr. ... Respondents

Ms. Priyanka R. Menon, for the Appellant.

Mr. N. V. Walawalkar, Sr. counsel a/w Mrs. Madhuri More, for
the Respondent No. 1.

Mr. Pratik Shah, for Respondent No. 2.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 13, 2018

PC :-

1. Heard the learned counsel for the Appellants, the learned senior counsel for Respondent No. 1 Corporation and the learned counsel for the Respondent No. 2. By the present appeal, Appellants are challenging the order passed by the court below in L.C. Suit No. 6553 of 2018 dated 8.5.2018 by which in pending notice of motion ad-interim relief is refused. The sum and substance of the submission of the learned counsel for the

Appellant is that Appellants should not be dispossessed without following due process of law.

2. Admittedly, the Appellants are not having title in the property. They are the occupants at the most in the structures belonging to the Corporation. According to the Corporation, said structures are in C-1 category, and therefore, work of development was entrusted to Respondent No. 2. According to learned counsel for Respondent No. 2, there were in all 515 occupants and out of that occupants of 365 structures have already vacated and in addition to that occupants of 105 structures have already executed an agreement. There are 60 occupants, including the present appellants, who have neither vacated the premises nor are they cooperating with the redevelopment.

3. According to the learned counsel for Respondent No.2, in fact, the Appellants have also executed agreement. This particular fact is very seriously disputed by the learned counsel for the Appellants that it is one sided and unilateral one and prejudicial to the appellants. She submits that unless the

Appellants' grievance is redressed by the Corporation, they should not be evicted.

4. Pending the notice of motion, learned Judge of the court below has recorded a specific finding in para 7 of the impugned order by which he has observed that the structure is C-1 category i.e. dilapidated condition and dangerous for human inhabitation.

5. Hon'ble Vacation Court on 21st May, 2018 has granted ad-interim order, which is continued in favour of the Appellants till today.

6. Notice of motion is still pending before the court below. In that view of the matter, it would be expedient in the interest of justice to direct the court below to decide the notice of motion as expeditiously as possible and in any case within three weeks and till that time ad-interim relief granted on 21st May, 2018 to continue on a condition of Appellants filing an affidavit in the nature of undertaking before this Court by Tuesday, 17.7.2018 that they shall be occupying the premises at their own risk, and if any untoward incident has occurred,

nobody except them, will be blamed. It is made clear that if such an affidavit in the nature of undertaking is not filed before this court by 17.7.2018, the ad-interim stay shall stand vacated. The Appellants shall file similar affidavit in the nature of undertaking before the court below on 18th July, 2018.

7. Both the parties have agreed that they will appear before the court below on Wednesday, 18th July, 2018.

8. The court below is also directed to decide the notice of motion on merits and in accordance with law within a period of three weeks from the date of appearance of the parties before the court below on 18th July, 2018.

9. Appeal is disposed of in the aforesaid terms. Needless to state that all civil applications filed in this appeal shall also stand disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath