

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST. NO.34208 OF 2018
WITH
CIVIL APPLICATION ST. NO.34211 OF 2018

Leelaben Babulal Mehta

-vs-

Mumbai Metropolitan Regional Development Authority

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Vishal Kanade, Advocate with Ms Rekha Shinde,
Advocate i/b M/s Legal Chartered for appellant.
Shri S. B. Talekar, Advocate with Ms Madhuri Ayyapan,
Advocate i/b Talekar and Associates for
respondent/MMRDA.

CORAM : A.S.CHANDURKAR, J.

DATE : December 06, 2018

1. Heard the learned counsel for the parties. The plaintiff is aggrieved by the order passed by the trial Court dated 27/11/2018 refusing to grant ad-interim relief in the notice of motion as filed by the plaintiff. In that notice of motion it was prayed that the respondent herein be restrained from taking possession of the property in occupation of the plaintiff.

2. According to the plaintiff she in possession of area of 1000 sq. ft on land from Survey No.104 along with a shed. The defendant issued a notice on 04/09/2017 calling upon the plaintiff to produce relevant documents to indicate her entitlement to occupy the area in question. After considering those documents on 06/03/2018 a communication was issued by the defendant to the plaintiff stating therein that area admeasuring 488.08 sq. ft. in occupation of the

plaintiff was being affected by the work undertaken by the defendant. That area was sought to be taken up with an option to accept to provide 225 sq. ft area to the plaintiff. On that count the aforesaid suit came to be file challenging the action of the defendant.

3. The trial Court while considering the prayer for grant of ad-interim relief found that prima facie there was nothing on record to indicate the plaintiff's entitlement to claim the land on which the plaintiff's structure was constructed. Considering the fact that a public project was being undertaken the trial Court refused to grant any ad-interim relief. On the same day on behalf of the plaintiff and on her instructions, it was submitted that the plaintiff would vacate the premises by 03/12/2018. It is thereafter that the present appeal has been filed.

4. Shri Vishal Kanade, learned counsel for the appellant on instructions submits that the plaintiff would abide by the statement which was made before the the trial Court that they were ready to vacate the suit structure in so far as the same is described in the notice as issued. It is further submitted that since the plaintiff is occupying an area exceeding 488.08 sq. ft, the actual area of which possession is to be given ought to be demarcated as according to him the plaintiff is in occupation of a larger area. On such demarcation the plaintiff would vacate the area admeasuring 488.08 sq. ft. The plaintiff has also expressed willingness to co-operate with the exercise of having that portion measured and demarcated and is also willing to bear the expenses for that purpose.

5. Shri S. B. Talekar, the learned counsel for the respondent supported the impugned order and submitted that the plaintiff has no right to occupy the structure in question. He referred to the map on record indicating the measurement carried out and the extent of area in occupation of the plaintiff. It is further submitted that on earlier occasions the plaintiff had not co-operated with the exercise of measurement. Without prejudice, it is submitted that if the area as mentioned in the notice dated 03/08/2018 is to be measured, same could be done by the City Survey Officer, Borivali. It is submitted on instructions that this exercise could be undertaken within a short period as each day's delay causes financial loss to the defendant.

6. After considering the material on record as well as the notice in question and in the light of the plaintiff's statement before the trial Court expressing willingness to vacate, the following order would serve the interests of justice :

(i) The City Survey Officer, Borivali is directed to immediately inspect the suit property and identify the area admeasuring 488.08 sq. ft. as described in the notice dated 06/03/2018. This exercise be conducted in the presence of the plaintiff. The Power of Attorney Holder of the plaintiff undertakes to remain present during such measurement. The measurement in question be undertaken at 11 am on 07/12/2018. The expenses of that measurement would be borne by the plaintiff after the same is carried out.

(ii) The affidavit of the plaintiff's Power of Attorney holder tendered in Court is taken on record and marked 'A' for identification.

(iii) After the area as mentioned in the Notice dated 06/03/2018 is identified its possession would be handed over by the plaintiff to the representative of the defendant. A report to that effect be placed before the trial Court.

(iv) As the substantive suit between the parties is pending it is clarified that this exercise would not prejudice the legal rights of either of the parties and they would be free to raise appropriate contentions/grievances in that regard in accordance with law. After this exercise is conducted the notice of motion be decided on its merits.

(v) With these directions the Appeal From Order and the Civil Application is disposed of.

(A.S.CHANDURKAR, J.)