

2 The suit is of the year 2006. The counter claim was filed in 2011. This notice of motion has been taken out in 2014. No application for any ad-interim relief also was made.

3 On 29th August 2018 the following order came to be passed by this Court :

1. There is a further Affidavit in Support of the Notice of Motion No. 148 of 2012 in the Counter-Claim. No ad-interim relief was sought in that Notice of Motion. The present Affidavit says that there is urgency because in 2018, the Plaintiffs have issued a public notice inviting Expressions of Interest before 31st July 2018 in furtherance of a Government scheme for optimal utilisation of lands in Mulund. The Counter Claimants, an Association of Persons or AoP says that it owns 50% of this land, admeasuring 52,178.16 sq. mtrs on Survey Nos. 297, 299, 300 and 309 of Village Mulund. In its Counter Claim, the AoP has sought partition of 50% of this land, and separate possession. The existence of this litigation relating to the land is not concealed and is obviously known to every interested party. In itself, that is not a reason to grant an ad-interim injunction in regard to a Government scheme. I have no doubt that the Government itself is fully aware of the pendency of this litigation. All interested parties will undoubtedly also be made aware of this litigation, if they are not already put to such notice.

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4 The basis for taking out this notice of motion is because applicant came to know that defendant no.1 (Richardson and Cruddas Limited) (hereinafter referred to as the company) had submitted a plan to the Collector, Mumbai to subdivide the suit property in two equal parts. According to applicant, this the company could not have done. It is also stated in the affidavit in support that from the website of the company it came to light that the company was wanting to give on rent/leave and license basis 2 lakhs sq. ft. of covered workshops/office and open space in

36 Acres land and 36 Acres included 6.75 Acres which applicant claims actually should go to applicant. According to applicant, therefore, there is a misrepresentation on the part of the company which admittedly is Government of India undertaking.

5 When the notice of motion was taken out, there was no case for any urgent relief made out. Situation prevailing then has not changed today except for the fact which Mr. Thakkar states is that the company has issued a notice in some newspapers inviting expression of interest and concept note to use the mulund land comprising of 37 Acres and therefore, the relief as prayed for in this notice of motion should be granted. Mr. Thakkar submitted that the threat perception in 2014 continues even today because of the expression of interest advertisement release. Mr. Thakkar also submitted that the company in the affidavit in reply has made an incorrect statement that it is giving on leave and license its surplus premises only to Government Department/Central Government/public sector companies/public sector units and not to the general public. Mr. Thakkar states that this is a false statement made in the affidavit in reply because the company had given out the premises for a social function to a private organisation - Shri Kutchi Lohana Mahajan, Mulund. Applicant has annexed photographs of the events where according to Mr. Thakkar many people were even eating. Mr. Thakkar states that even the website of the company shows the photographs

of various social events.

6 In my view, none of these points help applicant in getting the relief as prayed for in this notice of motion. The company is a Government of India undertaking. It is not applicant's case that the company is disposing of or dealing with or creating third party rights with respect to the 6.75 Acres of land which applicant is claiming. Indisputably the company has been in possession of the entire 37 Acres which includes this 6.75 Acres since 1974. Just because the company uses the surplus land to generate some income does not mean that the rights of applicant will get prejudiced in any manner. The counter claim includes claim for damages. It will be open to applicant to claim such amount as damages as advised at the appropriate stage. I should also observe that the expression of interest notice released by the company is only inviting applications bid to be able to advise the company as to how best the mulund land of 37 Acres could be used. Nothing more.

7 In the circumstances, notice of motion dismissed. No order as to costs.

8 On 18th July 2017 defendants in the suit were directed to file additional written statement within three weeks of receiving the amended plaint. The three weeks period got over some time in the end of August 2017/early September 2017. Defendants have not filed any additional

written statement.

9 Purely by way of indulgence, time to file additional written statement and serve a copy thereof is granted upto and including 22nd November 2018. Affidavit of documents to be filed by all the parties and copy served by 30th November 2018. Inspection to be completed by 5th December 2018 and statement of admission and denial with reasons for denial to be exchanged by 7th December 2018.

10 Stand over to 10th December 2018 for issues on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree. The directions given above will apply to the counter claim as well. It is made clear that if the above directions are not strictly complied with, parties will not be permitted to rely on any document apart from those, copies whereof are annexed to the written statement and/or plaint and/or counter claim or mentioned in the list of documents annexed to the written statement and/or plaint and/or counter claim.

NOTICE OF MOTION NO.148 OF 2012

1 Mr. Thakkar states that in view of the above order passed by this Court in notice of motion no.1056 of 2014, this notice of motion will not survive.

2 Notice of motion accordingly stands disposed.

GENERAL

Mr. Thakkar states that within two weeks from today, plaintiff to the counter claim shall provide list of members who comprise the association of persons to the advocate for the company. Statement accepted.

(K.R. SHRIRAM, J.)