

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2161 OF 2012

IN

SUIT NO.2122 OF 2012

Nivara Hakk Welfare Centre And 3 Ors. ... Applicants/Plaintiffs

Versus

Maganlal B. Chheda & Others ... Defendants

AND

City Survey Officer, Malad ... Respondent

• • • • •

Mr. Suresh Rajeshwar, for the Applicants/Plaintiffs.

Mr. P.M. Shah, a/w. Ms. Meetal Savla, for Defendant Nos. 2, 4 to 7.

Mr. D.R. Shetty, Court Receiver present.

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CORAM : S.C.GUPTE, J.

DATED : 19 SEPTEMBER 2018

P.C.:

. This notice of motion seeks appointment of a Court Receiver and a perpetual injunction against the Defendants restraining them from creating third party interests or parting with possession of the suit structures. By an order dated 26 September 2012, Court Receiver, High Court, Bombay, was appointed as an ad-interim receiver of the suit property with directions to take symbolic possession of the suit structures and make a report to the Court on the condition of the structures as well as the plot of land on which the structures are standing. The Receiver has

taken symbolic possession of the suit structures and also submitted his report on the size and condition of the suit structures as also the plot of land housing the structures. At the hearing of the notice of motion, the Defendants took up a contention that the suit property was declared a slum under a notification issued by the State under the Slum Areas (Improvement And Clearance) Act, 1956. In view of this submission, this Court, by its order dated 19 December 2014, directed D.I.L.R. to conduct a survey of the suit property and identify the location of the structures claimed by the Defendants and report on whether the suit property is declared as a slum under any notification. D.I.L.R. has conducted the required survey and submitted his report along with plans to this Court. In his report, the D.I.L.R. has confirmed that the suit property is not declared as slum under any notification. In the premises, at the hearing of the notice of motion, learned Counsel for the Plaintiffs/Applicants prays for confirmation of the order of receiver and continuance of the Defendants as agents of the receiver on payment of royalty. This Court is of the view that the receiver should be asked to have the property valued and propose a suitable royalty, whereupon the parties will be heard both on the incidence of royalty as well as its quantum. The notice of motion is disposed of by confirming the order of the Court Receiver of the suit property with symbolic possession of the same. The Defendants shall continue to occupy the suit property as agent of the Court Receiver. The Court Receiver shall have the suit property valued and propose royalty payable by the Defendants for occupation of the suit structures. The parties will be heard by the Court Receiver before proposing the royalty. After the Receiver proposessuch royalty in his report and the report is placed before this Court for orders, all parties shall be heard on the aspects of incidence of royalty

as well as its quantum. The Receiver to value the property and submit a report within a period of six weeks from today. The Plaintiffs shall bear the costs of valuation. Motion is disposed of.

Smita
Johnson
Gonsalves

Digitally signed by Smita
Johnson Gonsalves
Date: 2018.09.24
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(S.C.GUPTE, J.)