

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

**CIVIL APPLICATION NO.1746/2015
IN
FIRST APPEAL NO.489/2009**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Advocate Mr.Prashant Suryavanshi i/b GM
Savagave for applicant.
Advocaet Mr. PG Lad for respondent no.1.

**CORAM : K. K. TATED, J
DATE : AUGUST 16, 2019.**

P.C.:

Heard learned counsel for parties.

2 By this civil application, applicant is seeking order of injunction restraining respondent nos.2 and 3 from carrying out any construction and or change in nature of suit property till hearing and final disposal of first appeal.

3 Learned advocate for applicant submits that as on today, applicant is in use, occupation and possession of open plot of land admeasuring 50 X 50 sq.ft and total area 15005 sq.mtr bearing survey no.120, Paiki CTS 1371 situated at Kavate Khadi, behind BSES office, Lokhandwala, Versova, Andheri(W), Taluka-Andheri, Mumbai Suburban and running business of keeping and drying of fish and also nets in suit premises since 1960. He submits that applicant/original plaintiff filed S.C.Suit no.1057/2003 in City Civil Court for order of injunction and declaration. Said suit stand dismissed by judgment and decree dated 22.6.2007. He submits that if during the pendency of first appeal, respondent nos.2 and 3 carries out construction activity, then nothing will survive in present first appeal. Hence, in the interest of justice, pending the hearing and final disposal of first appeal, respondent may be restrained by order of injunction from carrying out any construction activity on suit premises. He submits that applicant has good chance of success in the matter.

4. On the other hand, learned counsel Mr.P.G.

Lad for respondent nos.1 and 2 vehemently opposed present civil application. In a similar way, learned advocate for Corporation Mrs. Sheetal Mane opposed the application.

5. Learned advocate for respondent Nos.1 and 2 filed their affidavit in reply dated 8.7.2019, stating the land is belonging to the Collector, Government. The Collector has granted them permission for beautification of lake and for that purpose they want to carry out construction. In support of his contention, learned counsel for respondent nos.1 and 2 relies on para 4 of his affidavit in reply, which reads thus;

4. I say that MHADA is the nodal Authority. The work of the beautification of the said lake is carried out by Slum Board. I say that the Maharashtra Coastal Zone Management Authority granted permission for said beautification of lake. I say that the lake as well as the land is required to be protected, otherwise, it will be become a place for throwing debris and garbage. I say that to avoid any untoward incidents, proper protection is required to be taken. Therefore, the work of the beautification and fencing is taken up by Slum Board, MHADA from the funds of District Planning and Development Council. I say that the in Minutes of the 130th Meeting of

the Maharashtra Coastal Zone Management Authority (MCZMA) held on 1st March 2019, MHADA is permitted to provide chain link fencing and compound wall to the Lokhandwala lake. Hereto annexed and marked Exhibit II is the copy of the Minutes of the 130th Meeting of the Maharashtra Coastal Zone Management Authority (MCAMA) held on 1st March 2019.

6. On the basis of this, learned counsel for applicant submits that there is no substance in the present proceeding and same is required to be dismissed with cost.

7. I heard learned counsel for parties at length. It is to be noted that in the present case, plaintiff filed suit for injunction and declaration for possession. It was dismissed by the trial court by judgment and decree dated 22.6.2007 by framing following issues.

- 1) Whether plaintiff proves her possession over the suit property admeasuring 50' x 50' sq.ft as shown in map Exh.B? - No.
- 2) Whether plaintiff proves obstruction by the defendants ? - No.
- 3) Whether plaintiff is entitled to relief, as prayed for ? No.
- 4) What order? - Suit dismissed.

8. It is to be noted that the land is belonging to the State of Maharashtra Even during the

pendency of the suit in trial court, the trial court has not granted any protection in favour of applicant. First time applicant is seeking injunction against true owner. This shows that applicant do not has right, title and interest in respect of suit property. Therefore, there is no question of entertaining present civil application. Hence, the following order.

- a) Civil Application stands rejected.
- b) No order as to cost.

(K.K.TATED, J.)