

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

**APPEAL FROM ORDER (ST) NO. 23390 OF 2019
WITH
CIVIL APPLICATION (ST) NO. 23392 OF 2019**

Nirman Realtors and Developers Ltd. ...Appellant
vs.
Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Mr.Mayur Khandeparkar I/b. Makarand V. Raut for Appellant.
Ms.Madhuri More for Respondent Nos.1 and 2 – MCGM.
Mr.Girish Utangale I/b. Utangale & Co. for Respondent No.3-SRA.
Mr.Amogh Singh I/b. Jeet Gandhi for Respondent No.5.

CORAM : S.C. GUPTE, J.

DATE : 27 AUGUST 2019

P.C. :

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of counsel.

2 This appeal from order challenges an order passed by the City Civil Court at Dindoshi on an interlocutory application filed by the Appellant (original Plaintiff). The Plaintiff's suit is in respect of a particular plot of land, bearing Survey No.273, Hissa No.1 (Part), C.T.S. No.738/B/1/A (Part) admeasuring about 4220 sq.mtrs of Village Malad, Taluka Borivali, situate at Azad Link Road, Sanjay Nagar, Pathanwadi, Rani Sati Marg, Malad (East), Mumbai – 400 097. The Plaintiff is a developer of this plot of land holding a Letter of Intent (LOI) under a Slum Rehabilitation scheme. The Plaintiff's development agreement with the society of slum dwellers is of the year 2006. On 10 August 2009, an LOI

was issued by the Slum Rehabilitation Authority (SRA) in favour of the Plaintiff. Subsequently, this LOI was revised on 3 February 2018. In pursuance of the LOI, the Plaintiff has erected the rehab components of the scheme. Subsequently, there was action on the part of the society of slum dwellers for revocation of the LOI and removal of the Plaintiff as a developer. An application made under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 in that behalf came to be rejected by the Competent Authority, Slum Rehabilitation Authority. The Apex Grievance Redressal Committee (AGRC) allowed the society's appeal and passed an order under Section 13(2). In a challenge to the order before this court, the order of AGRC was set aside. The society is in appeal before the Supreme Court. There is, however, no stay for execution of the rehabilitation scheme of the Plaintiff. In the backdrop of these facts, it is the grievance of the Plaintiff that Defendant No.5 (who is Respondent No.5 in the present AO) muted a proposal for construction of a public toilet in the open space forming part of the rehab scheme, namely, Plot bearing C.T.S. No.738/B/1/A of Village Malad. It appears that the first Respondent has issued a work order in favour of Defendant No.6, who has been subsequently added as a party to the suit (Respondent No.6 to the present AO). Aggrieved by the proposal of the construction of the toilet block within the area forming part of the rehabilitation scheme, the Plaintiff filed the present suit seeking a perpetual injunction against the Respondents from proceedings with the construction of the toilet block. On the Plaintiff's notice of motion, initially, an ad-interim injunction order was passed by the trial court. At the hearing of the notice of motion, however, the trial court held against the Plaintiff. The court *inter alia* observed that the Plaintiff had suppressed the material fact concerning existence of an old toilet block in the property and hence,

was disentitled to any equitable relief.

3 It is beyond dispute that the subject plot, namely, Plot bearing C.T.S. No.738/B/1/A, is part of a proposed SR scheme. The LOI has been issued in respect of the plot. The Plaintiff has constructed on the said property in pursuance of the SR scheme. Neither do Defendant Nos.5 and 6 have any right to construct in the subject plot nor does the Respondent corporation have any right to issue any work order in respect of any construction in the subject plot. The plot being the subject matter of an SR scheme, the Respondent corporation ceases to be a Planning Authority in respect of the plot. The proposed construction anyway does not form part of the LOI issued by the SRA and no construction beyond what is permissible under the LOI issued by the Rehabilitation Authority is possible on the plot, which is subject to an SR scheme. On these facts, the Plaintiff has a perfect *prima facie* case for getting the injunctive relief asked for.

4 So far as the alleged case of suppression of facts is concerned, the case appears to be a classic instance of a circular argument. It is not the Plaintiff's case that there was any toilet block existing on plot bearing C.T.S. No.738/B/1/A. The trial court appears to have simply assumed that the toilet block was in place on the subject plot and then faulted the Plaintiff for not having brought it to the notice of the court. This is clearly impermissible. There is absolutely no material before the court that there was a toilet block in existence on the subject plot. Strangely enough, even the work order issued by the Respondent corporation for construction of a toilet block does not identify the plot on which the toilet block is to be constructed; much less it identifies the plot as the subject plot, namely, plot bearing C.T.S. No.738/B/1/A.

5 The trial court is, accordingly, in a complete error in rejecting the interlocutory application of the Plaintiff. The Plaintiff has an overwhelming *prima facie* case, where an injunction order ought to have issued.

6 Accordingly, the impugned order passed by the City Civil Court at Dindoshi on 25 July 2019 is quashed and set aside and the Plaintiff's notice of motion, being Notice of Motion No.996/2019, is allowed in terms of prayer clause (a). It is, however, clarified that in case, it is the case of either the Defendant corporation or Defendant No.5 and/or 6 that any toilet block was in existence on any other plot, i.e. plot other than plot bearing C.T.S. No.738/B/1/A, this order shall not come in the way of reconstruction of any such toilet block on such other plot.

7 If, and to the extent, there is any digging activity in the subject plot, i.e. plot bearing C.T.S. No.738/B/1/A, it will be permissible to the Plaintiff to do the work of filling up.

8 The appeal is disposed of accordingly. In view of the disposal of the appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)