

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

**APPEAL FROM ORDER (ST.) NO. 36398 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 36400 OF 2018
ALONG WITH
APPEAL FROM ORDER (ST.) NO. 33082 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 33083 OF 2018**

Azami Charitable Trust & Ors.	...	Appellants
V/s.		
Mumbai Metropolitan Regional Development Authority	...	Respondent

**ALONG WITH
CIVIL APPLICATION (ST.) NO. 1958 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 36398 OF 2018**

Ashok Madhukar Patil	...	Intervenor
<u>In the matter between :</u>		
Azami Charitable Trust & Ors.	...	Appellants
V/s.		
Mumbai Metropolitan Regional Development Authority	...	Respondent

- Mr.V.R. Tripathi for the Appellants.
- Ms.Kavita N. Solunke for the Respondent-MMRDA.
- Mr.Ramesh Dube Patil a/w. Ms.Khushbu Marwadi for Intervenor.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st JANUARY, 2019.

P.C. :

1] Heard learned counsel for the Appellants, learned counsel for the Respondent-MMRDA and learned counsel for the Intervenor.

2] The Appeal From Order (St.) No.36398 of 2018 takes an exception to the order dated 17/12/2018 passed by the City Civil Court, Mumbai thereby dismissing the Notice of Motion No. 4657 of 2018 in Suit (Stamp) No. 14582 of 2018.

3] Whereas, Appeal From Order (St.) No. 33082 of 2018 takes an exception to the order dated 16/11/2018 passed by the City Civil Court, Mumbai thereby dismissing the Unregistered Notice of Motion in the same suit i.e. Suit (Stamp) No. 14582 of 2018.

4] The said Notice(s) of Motion were taken out by the present Appellant to direct the Respondent-MMRDA to handover the possession of the suit premises for the limited period upto 30/05/2019 for continuing classes of the students and for holding the final examination of the students. The trial Court has however dismissed the both the Notice(s) of Motion and hence, the instant appeal(s).

5] The submission of learned counsel for the Appellant is

that, as a result of the Respondent taking over the possession of the suit premises, the future of around 1200 students who are taking education in the said school, which was being run in the suit premises, has been affected. The Appellant is therefore finding it difficult to safeguard interest of the students, as their classes could not be conducted and even their final examination could not be held. Therefore, it is submitted that, for this limited period upto 30/05/2019 on any terms including the giving of security, the Appellant may be handed over the possession of the suit premises. It is submitted that immediately after 30/05/2019, the Appellant will handover the peaceful and vacant possession of the suit premises to the Respondent.

6] This submission of learned counsel for the Appellant is strongly resisted by the Respondent and also by the Intervenor, namely, the occupants of the Society in which the suit premises are situated. It is submitted that as per the earlier order passed by trial Court in the Notice of Motion taken out by the Appellant for delivery of the possession of the suit premises is already rejected. Hence, this prayer for handing over the possession till 30/05/2019 cannot be allowed; especially when the school is run in the premises belonging to the Society and there are several complaints received by the Society

against illegal conduct of the school in the said premises. Moreover, it is submitted if such relief is allowed at this interim stage, it is as good as granting the final relief itself and hence, such request should not be allowed.

7] Secondly, it is submitted that the Appellant is having two other school premises in the same vicinity itself, in which he has accommodated these students. However, in the name of protecting the interest of the students, the Appellant wants to give admission to new students and thereby obtain the pecuniary benefit and hence, such prayer should not be granted. It is urged that the trial Court has rightly rejected the same and in the appeal from such a discretionary order, it should not be entertained.

8] Learned counsel for the Intervenor has produced on record, the notice issued by the Municipal Corporation stating that the permission is not granted by the Municipal Corporation for conducting the school in the suit premises and the school is declared as illegal and unauthorized. Whereas, according to learned counsel for the Appellant, the Government has granted such permission in the year 2008.

9] In my considered opinion, even accepting that such permission was granted by the Government to run the school, as regards the premises wherein the school was conducted, it was for the Municipal Corporation to decide whether the said premises can be used for running the school. The premises were given to the society for community hall and if against the wishes of the occupants of the Society and against the purpose for which the premises were given, the Appellant is trying to run the school therein, and that too illegal and unauthorized school, then naturally at this stage, no case is made out to grant the relief as sought by the Appellant; especially when the affidavit filed by the Respondent-MMRDA goes to show that the Appellant is having two other premises where Appellant had already accommodated the students. Therefore, there is no question of irreparable loss caused to the interest of the Appellant or to the students.

10] In the discretion therefore exercised by the trial Court, no interference is warranted at the hands of this Court. Hence, the Appeal(s) along with Civil Application(s) stand dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]