

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.38 OF 2014
WITH
NOTICE OF MOTION NO.2598 OF 2016
IN
SUIT NO.926 OF 2013
WITH
SUIT NO.926 OF 2013**

Dr. Amebedkar Nagar Vikas Society ...Plaintiff

Versus

The Brihanmumbai Municipal Corporation ...Defendant

.....

Mr. Ashutosh Kaushik i/b. M/s. Kaushik and Co. for the Plaintiff.

Mr. Ram Apte, Senior Counsel with Mr. R.Y. Sirsikar for the MCGM-Defendant.

Mr. Mulik, Assistant Registrar, 'R' South Ward, MCGM present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th APRIL, 2019.

P.C.:-

At the outset the learned counsel for the Plaintiff seeks leave to amend the prayer clauses (a) and (b) so as to substitute the word 'Exhibit-'A" instead of the word 'Exhibit-D'. Leave is granted. Amendment to be carried out forthwith.

2. The dispute in the present suit is the land bearing survey No.129, Hissa No.1 (Part), C.T.S. No.28, admeasuring 4 Acre, 31-3/4

Gunthas equal to 19,614.40 sq. meters of village: Kandivali, Taluka-Borivali, District:Mumbai alongwith structures standing thereon, more particularly described and delineated in the plan at Exhibit-'D'. The said property shall be hereinafter referred to as 'suit property'.

3. The Plaintiff claims that they have formed and registered a welfare society and that they have constructed their respective huts in the land admeasuring 3,417.50 sq.meters from of the suit property. The Plaintiff further claims that they are cultivating the remaining portion of the suit property admeasuring 16,196.90 sq.mtrs. The Plaintiff has sought declaration that they have acquired title over the suit property by way of adverse possession. The Plaintiff has also sought relief of permanent injunction seeking to restrain the Defendant-Corporation from interfering with possession and enjoyment of the suit property as well as the structures standing thereon, more particularly delineated in plan at Exhibit-D, without following due process of law.

4. Today, when the matter was called out, the learned counsel for the Plaintiff submitted that he does not wish to press for the relief in prayer clause (a) wherein the Plaintiff has sought a declaration that

the Plaintiff has acquired title by adverse possession. The learned counsel states that the relief is restricted to prayer clause (b).

5. In the course of hearing of the notice of motions, Mr. Kaushik, the learned counsel for the Plaintiff and Mr. Apte, the learned senior counsel for the Defendant-Corporation, state that the parties have decided to resolve the dispute amicably. The learned counsel state that without going into the merits of the matter and leaving open all other rights and contentions of the respective parties, the Suit be disposed of as per the following terms:-

- (a) The Plaintiff shall not object for use of the land for 18.30 meter vide DP road, which is a direct access to the proposed multi purpose community building constructing on plot bearing CTS Nos.27/A of Village Kandivali and CTS No.13/A/B of village Poisar, as delineated in the plan at Exhibit-B annexed to the additional affidavit dated 25/3/2019 filed by Uttam Dadasaheb Mulik, Assistant Engineer (Maintenance), on issuance of intimation by the Corporation.

(b) The Corporation shall not interfere with the possession and enjoyment of the Plaintiff in respect of the suit property and the structures standing thereon without following due process of law.

(c) In the event the Plaintiff files any reply as regards the use of the land for 18.30 meter D.P. Road, the Defendant -Corporation shall consider the same on its own merits without being influenced by the statement made by the Plaintiff.

6. The learned counsel for the respective parties state that the above statements are made under the instructions of the respective parties. The said terms are agreeable to the respective parties and they shall abide by the same.

7. The statements made by the Plaintiff and the Defendant through their respective counsel are accepted as undertaking to the Court. The suit is decreed as per the aforestated terms. Decree be drawn as per the terms. Both motions are disposed of in view of disposal of the suit. Leave to apply in case of clarification.

8. Both the notice of motions stand disposed of in view of disposal of the suit.

(SMT. ANUJA PRABHUDESSAI, J.)