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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 781 OF 2019
IN
SUIT NO. 3314 OF 2003

New Cosmopolitan Cooperative Housing Society ...Applicant
Ltd

In the matter between

New Cosmopolitan Cooperative Housing Society ...Plaintiffs
Ltd

Versus

The State of Maharashtra & Anr ...Defendants

WITH
CHAMBER SUMMONS (L) NO. 423 OF 2019
IN
SUIT NO. 3314 OF 2003

New Cosmopolitan Cooperative Housing Society ...Applicant
Ltd

In the matter between

New Cosmopolitan Cooperative Housing Society ...Plaintiffs
Ltd

Versus

The State of Maharashtra & Anr ...Defendants

Mr Darius Khambata, Senior Advocate, with Mr JP Sen, Senior Advocate, with Mr Rahul Soman, Mr JS Solomon, Ms Soniya Putta, Ms Chinmayee Das and Ms Vaishali Chaturvedi, i/b M/s Solomon & Co, for the Plaintiff.

Mr Kunal Bhanage, *AGP, for Defendants Nos. 1 and 2.*

CORAM: G.S. PATEL, J
DATED: 27th March 2019

PC:-

1. The Plaintiffs seek leave to amend the Complaint to include subsequent events. Mr Khambata moves an draft amendment to substitute the schedule to the Chamber Summons incorporating certain changes. That substitution of the schedule in the Chamber Summons will be carried out in the course of the day. Having seen the substituted/revised schedule (or, at any rate, the corrections proposed at this time to the schedule and which I have directed will be integrated in a composite replacement of the entire schedule), I am satisfied that the amendment should be allowed. It does not alter the nature of the case in the least. Apart from subsequent events, the additional averments regarding previous correspondence are also necessary to determine the real controversy in this suit. The Chamber Summons is accordingly made absolute in terms of prayer clause (a) permitting the amendments in terms of the substituted schedule to the Chamber Summons. A re-verification to the amendments to the Complaint will be necessary.

2. There is also a prayer in the Chamber Summons itself for a restraint against the Defendants from proceeding forcibly against the Plaintiffs either in recovery or to take possession of the Plaintiffs building. These are also the prayers in the Notice of Motion.

3. Very briefly stated, the Plaintiffs case is that their original lease from the State Government, for a period of 99 years initially in 1884 and then fresh leases or renewals issued thereafter included a contractual renewal provision. The 1959 lease included a renewal clause carried forward and this prima facie granted the lessee-Plaintiff the right to receive a new or renewed lease. The immediate apprehension is that, very recently, on 28th February 2019 and 5th March 2019, the Collector has demanded a very large amount in excess of over Rs.2 crores for the renewal and in default threatened coercive proceedings including under the Maharashtra Land Revenue Code i.e. an attachment or a proceeding under Section 53 of the Code against the building if the demand was not paid within 21 days. It will need to be examined whether the Government has the executive power to pass such an order or to demand these amounts or to forcibly recover this demand against the property in this matter in defeasance of a contractual provision.

4. For the present I am leaving all contentions open but parties will, in my prima facie view, have to be maintained in status quo till that application is fully heard.

5. At this stage, in fact, Mr Bhanage for the State Government does not have instructions either to make a statement that the Government will not act, nor to respond on merits, and he seeks time to obtain fuller instructions. If the injunction is not granted, not only will very great prejudice be caused to the Plaintiffs but this entire suit might well be rendered infructuous. For that reason, I will grant an ad-interim injunction in terms of prayer clause (b1) and (b2) but I will make that order as an ad-interim order in the

Plaintiff's Notice of Motion (L) No. 781 of 2019, prayer clauses (a) and (b) of which are identical to prayer clauses (b1) and (b2) of the Chamber Summons.

6. To avoid any controversy prayer clauses (a) and (b) of the Notice of Motion are reproduced below.

(a) that pending the hearing and final disposal of this suit, the Defendants and the authorities and officers of the Defendants and their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner directly or indirectly acting contrary to the terms set out in the Leases dated 7th April, 1959 and 15th April 1959 (Exhibit "B" and "D" to the Complaint) and demanding or recovering from the Plaintiffs lease rent in excess of annual rent of Rs.14/- (Rs. 7/- per plot) and from enforcing or taking any steps or actions for recovery from the Plaintiffs of any amount or property and/or acting upon, giving effect to or operating Government Resolution dated 12th December 2012 (Exhibit "C" hereto) (as modified by the Government Resolution dated 5th May 2018 (Exhibit "F" hereto)) and Order No. CSLR/MS-1/T-2/ Malabar Hill/ P.No.913/ L.R./ 2019/ 3356 dated 28th February 2019 passed by Defendant No.2 and Order No. CSLR/MS-1/T-2/ Malabar Hill/ P.No.914/ L.R./ 2019/ 3579 dated 5th March 2019 passed by Defendant No.2;

(b) that pending the hearing and final disposal of this suit, the Defendants and the authorities and officers of the Defendants and their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner directly or indirectly dispossessing the Plaintiffs from Plot Nos. 6 & 7 and/or disturbing or interfering with or obstructing the Plaintiffs' quiet and peaceful possession

and enjoyment of Plot Nos. 6 & 7 (described in Exhibit "C" and "E" to the Complaint) and the building thereon on the terms set out in the Leases dated 7th April, 1959 and 15th April, 1959 (Exhibit "B" and "D" to the Complaint);

7. There will be an ad-interim order in these terms operative till 26th April 2019.
8. List the Notice of Motion for further ad-interim reliefs on 16th April 2019 at 3.00 pm.
9. The Chamber Summons is disposed of in these terms.

(G. S. PATEL, J)