

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.534 OF 2006
IN
NOTICE OF MOTION NO.1247 OF 2005
IN
SUIT NO.1172 OF 2005**

The Deputy Salt Commissioner and Anr. ... Appellants
versus
Vikas Kamalakar Walawalkar and Anr. ... Respondents

**WITH
NOTICE OF MOTION NO.160 OF 2019
IN
APPEAL NO.534 OF 2006
IN
NOTICE OF MOTION NO.1247 OF 2005
IN
SUIT NO.1172 OF 2005**

State of Maharashtra ... Applicant
in the matter of
Deputy Salt Commissioner and Anr. ... Appellants
versus
Vikas Kamalakar Walawalkar and Anr. ... Respondents

Mr. Rajguru with Mr. Ashish Mehta, Mr. Mohit Sahani i/by Mr. Ashish Mehta, for Org. Appellants.

Mr. Ram Apte, Senior Advocate with Mr. Kedar Dighe, for Applicant in NMA.

Dr. Milind Sathe, Senior Advocate with Mr. Kunal Dwarkadas, Mr. Anirudh Hariyani i/by Mahimtura and Co., for Respondent No.1.

Mr. Sagar Patil, for MCGM.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 22nd AUGUST, 2019

P.C.:

1. This Appeal is filed by the Deputy Salt Commissioner and another, Original Defendant Nos.1 and 2 to challenge the interim injunction order passed by the learned Single Judge dated 5th June, 2006 in a Notice of Motion taken out by the Original Plaintiff, who is Respondent No.1 in the present Appeal. By the said Judgment in the case of Vikas Kamalakar Walawalkar /s. Deputy Salt Commissioner and Ors.¹ the learned Single Judge has granted the Notice of Motion in terms of prayers clauses (a) and (b). Prayer clause (a) is the relief pending the disposal of the Suit restraining the Defendant Nos.1 and 2 from acting in furtherance of an order dated 1st April, 2005. Prayer clause (b) is for restraint pending the Suit against Defendant Nos.1 and 2 from entering upon the salt lands described at Exhibit B to the Plaint. By such injunction order, thus, the Original Defendants and in particular, the Salt Commissioner have been enjoined from evicting the Plaintiff from the suit lands, for which the Plaintiff claims to have entered into the lease agreement with the Sale Commissioner. It is this judgment which the Deputy Salt Commissioner has challenged in the present Appeal.

1 AIR 2006 Bom 265

2. The Notice of Motion is taken out by the State of Maharashtra with a prayer to direct the parties to immediately handover vacant possession of the part of the suit lands to the State Government. According to the State Government, these lands are of the ownership of the State and which are required for the purpose of solid waste management . Hence the prayer.

3. Pending the Appeal, further developments have taken place which we need to take note of. The lease period for the lands in question having expired on 14th October, 2016, the Plaintiff had applied for renewal of the lease. The Deputy Salt Commissioner having refused to extend the lease, the Plaintiff sought amendment of the Suit. The Union of India has filed a Notices of Motion before the learned Single Judge and prayed for dismissal of the Suit and for handing over the possession of the lands in question. These Notices of Motions were disposed of by common order passed by the learned Single Judge dated 9th November, 2017. Liberty was granted to the Plaintiff to amend the Suit. Prayer for dismissal of the Suit was dismissed. Prayer for handing over possession of the lands was not pressed. To complete the narration, we record that this order was challenged in two separate Appeals (L) No.459 and 460 of 2017 by the Deputy Salt Commissioner. These Appeals

came to be dismissed by common order dated 27th August, 2018.

4. The facts on record would therefore, suggest that after the learned Single Judge passed the impugned order of injunction, several developments have taken place. The injunction was granted testing the prima facie case, balance of convenience and irreparable loss on the basis of factors which obtained at the relevant time. In this Appeal, ordinarily at this distant point of time, we would not have been inclined to disturb the injunction which had prevailed for a long time. However, certain fresh developments would have the bearing on the question of the Plaintiff continuing with the possession of the lands under the injunction granted by the learned Single Judge. Such relevant developments are the expiry of the lease period, application by the Plaintiff for renewal of the lease and refusal of the Deputy Salt Commissioner to do so. These developments are already brought on record by the Plaintiff through amendment which has been granted.

5. In view of such further developments, we do not find it necessary to entertain this Appeal on merits. Instead, we leave it to the Deputy Salt Commissioner if so advised to file appropriate application before the learned Single Judge for modifying/vacating the interim injunction in view of changed circumstances. It is

clarified that if such an application is filed, the same would be decided in accordance with law. All contentions of the Plaintiff including whether such an application is maintainable are kept open.

6. In view of the disposal of the Appeal, the Notice of Motion filed by the State Government would automatically stand disposed of, however with a clarification that nothing stated in this order would prevent the State Government from pursuing its legal options, subject to legal defences of the Plaintiff.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)