

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

**NOTICE OF MOTION NO. 1001 OF 2014
IN
SUIT NO. 918 OF 2014**

Metropolitan Development Corporation ... Plaintiff

V/s
Sunder Sangam CHS ... Defendant.
...Respondent.

.....
Mr. Ajit Anekar i/b Auris Legal for the Plaintiff.
Mr. Viraj Maniar a/w Ms. Sneha Patil i/b
Maniar Srivastava Associates for Defendant.
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**CORAM : B. P. COLABAWALLA, J.
JUNE 21, 2019.**

P.C. :

1. This Notice of Motion has been filed seeking to restrain the Defendant/Society from carrying on any development activities on the property being Plot No. 10 and 11, corresponding CTS No. 33/18, Sundernagar, Village Chinchavli, Near Malad, Taluka-Borivali, Mumbai. (In short the suit property). An injunction is also sought from restraining the Society from parting with possession or creating any third rights in respect of the same. As far as prayer clause (d) is concerned, it seeks appointment of a Court Receiver and prayer

clause (c) seeks a mandatory order directing the Defendants to hand over to the Plaintiff, vacant and peaceful possession of the land admeasuring 316.85 square meters of the suit property from Plot Nos. 10 and 11.

2. When this Notice of Motion was pressed for ad-interim relief, the same was rejected by this Court vide its order dated 11th August, 2014. This ad-interim order was subjected to an Appeal being Appeal lodging No. 567 of 2014. The Division Bench, by its Order dated 17th September, 2014, inter-alia recorded that the Learned Judge has rightly refused any ad-interim relief. The Division Bench also prima facie came to the conclusion that there was no justification for stalling a development in respect of 5374.25 square meters of the suit property and which was admittedly in possession of the Defendant/Society. It further recorded that the interest of the Appellants (the Plaintiffs herein) were adequately protected by the Respondents' statement that they will apply for the re-development only of the area admeasuring 5374.25 square meters.

3. When this motion is called out today for hearing, Mr. Maniar, has fairly stated before me that the statement made before the Division Bench on 17th September 2014, can be continued till the

disposal of the suit. He states that the Society shall only redevelop the portion of the land admeasuring 5374.25 square meters which is in possession of the Defendant/Society. In fact, Mr. Maniar also tendered before me a colour xerox copy of the plan prepared by City Survey Officer dated 13th January 2016 which clearly shows the area which is in possession of the Defendant/Society. Copy of the said plan is taken on record and marked X for identification.

4. When one reads this plan along with the property card, at least, prima facie, it is evident that the Defendant/ Society is in use, occupation and possession of 5374.25 square meters of the suit property. Considering the statement made by Mr. Maniar that they will redevelop only this area with the corresponding benefits, if any, I do not think that any further relief can be granted in favour of the Plaintiff. Accepting the statement of Mr. Maniar, the Notice of Motion is accordingly disposed off. No order as to costs.

(B.P.COLABAWALLA, J.)