

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

WRIT PETITION 6946 OF 2022

Mr.Tahir Nazir Shaikh

...Petitioner

vs.

Mumbai Housing & Area Development
Board & Ors.

...Respondents

Mr.Rajesh Kachare with S.M. Suryawanshi for Petitioner.

Mr.D.P. Singh for Respondent.

Mr.Tahir Shaikh, Petitioner present.

CORAM : ROHIT B. DEO, J.

DATED : 15 JULY 2022

PC. :

1. The Petitioner is the plaintiff in Civil Suit 52/2022 instituted against Mumbai Housing & Area Development Authority (MHADA) seeking declaration that the threatened action of demolition of the suit premises is arbitrary, bad in law and null and void.

2. In the context of the controversy, it would be necessary to reproduce the prayer clause (a) which reads thus

“a) that this Hon’ble Court be pleased to declare that, the threatened action of demolition of the suit premises viz. a ground plus mezzanine floor structure made up of B.M. walls and A.C. sheet roof, admeasuring about 1,722 sq.feet, being ‘Tara Business Centre’, bearing Gala No.1, situate next to MHADA Plot No. 1055, JVLR Extension Road, Adarsh Nagar, Oshiwara, Jogeshwari (West), Mumbai 400 102, on a plot of land bearing CTS No.651/A/1 (Pt.), of Village Oshiwara, Taluka Andheri, Mumbai Suburban District, on the part of the Defendants without

following the due process of law is arbitrary, ultra vires, illegal, bad in law, null and void.”

3. The suit property is described by the plaintiff in paragraphs 3 and 4 of the plaint which reads thus :

- “ 3. The Plaintiff states that, the present suit is being filed in respect of a ground plus mezzanine floor structure made up of B.M. walls and A.C. sheet roof, admeasuring about 1,722 sq. feet, being ‘Tara Business Centre’, bearing Gala No.1, situate next to MHADA Plot No. 1055, JVL Extension Road, Adarsh Nagar, Oshiwara, Jogeshwari (West), Mumbai 400 102, on a plot of land bearing CTS No.651/A/1 (Pt.), of Village Oshiwara, Taluka Andheri, Mumbai Suburban District, hereinafter referred to as “the suit premises”, for the sake of brevity and convenience. Hereto annexed and marked Exhibit-“A” is the copy of the Existing Structure Layout Plan of the suit premises.
4. The Plaintiff states that, on the plot of land bearing MHADA Plot No. 1055 lying adjacent to the suit premises, is situate a ground plus mezzanine floor structure made up of B. M. walls and A.C. Sheet Roof, admesuring about 500 sq. feet. The Plaintiff, along with one Mr. Rajendra Robert Mayers, is a Licensee in respect of the said premises admeasuring about 500 sq.feet, situate on the MHADA Plot No. 1055, adjacent to the suit premises, under a valid and subsisting registered leave and license agreement entered into with the owner Smt. Kuljit Kaur. The said premises admesuring about 500 sq. feet is hereinafter referred to as “the said licensed premises” for the sake of brevity and convenience. However, it may be noted that, the said licensed premises is not the subject matter of the present suit. Hereto annexed and marked Exhibit- “B” is a photograph showing the suit premises, as well as, the licensed

premises.”

4. Respondents 3 and 4 preferred an application under Order 1 Rule 10 of the Code of Civil Procedure (Code) seeking impleadment in the suit on the premise that they are allotted gala 1055 which was given to the plaintiff on leave and license basis.

5. The learned trial court has allowed the chamber summons and aggrieved by the said order, the Petitioner is before this Court.

6. I need not delve deeper in the narrative and counter narrative since after a lengthy hearing, mutually acceptable arrangement is worked out in the following terms :

(I) The statement of the learned Counsel for the Petitioner – plaintiff, which is made on the basis of instructions received from the plaintiff Mr.Tahir Shaikh, who is personally present in Court, that the plaintiff shall not stake any claim as regards gala 1055 which is allotted to the third party – Respondent 3 and further the plaintiff shall not question any notice or part thereof issued by MHADA to the extent the notice pertains to gala 1055 or any part of the construction of the said gala, is noted and recorded.

(II) The contention of the plaintiff that the suit, as a fact, does not pertain to gala 1055 and that the suit property is different is noted.

(III) By mutual consent, the chamber summons stands dismissed and disposed of.

8. The petition is disposed of in the aforesaid terms.

(ROHIT B. DEO, J.)