

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

**APPEAL FROM ORDER NO. 785 OF 2022
WITH
INTERIM APPLICATION NO. 17070 OF 2022
IN
APPEAL FROM ORDER NO. 785 OF 2022**

Ayyanar Ramaswamy Yadav ...Appellant
V/s.
Mumbai International Airport Ltd. & Anr. ...Respondents

Mr. Pradip J. Thorat a/w. Mr. J. S. Yadav i/b. Mr. B. S. Shukla, for
the Appellant.

Mr. Vineet Naik, Sr. Advocate a/w. Ms. Shoma Maitra and Ms.
Naziya Khan, for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 10 AUGUST 2022

P.C.

. The challenge in this appeal, is to the order dated 25 July 2022 passed by the learned City Civil Court, Dindoshi, Mumbai in Notice of Motion No.2228/2022 in S. C. Suit No.1630/2022. By the impugned order, the learned City Civil Court, has refused to grant temporary injunction to the Appellant / Plaintiff restraining the Respondent Mumbai International Airport Ltd. (MIAL) from evicting the Appellant from the suit premises, without following due process of law.

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2. The Appellant has filed the aforesaid suit simpliciter for injunction restraining the Respondent-Authorities from evicting the Appellant from the suit premises which are described as a structure admeasuring 12 ft x 22 ft made partly of Brick Masonary (BM) Wall, Patra Wall and A.C. Sheet Roof. Except this, there are no other particulars of the suit premises set out in the plaint. According to the Appellant, one Gautam Narayanlal Jain was the previous occupier of the suit structure and the Appellant had entered into an agreement to purchase the suit structure from Gautam Jain under the agreement to sale dated 12 October 2012. The Appellant claims to be in possession of the suit structure where the Appellant is carrying on business in the name and style as 'M/s. Balaji Granites and Tiles'. The contention on behalf of the Appellant is that the Appellant is shown to be in settled possession of the suit premises / structure since 2012 and prior thereto, the Predecessor Gautam Jain was in occupation of the suit structure and therefore, the Appellant cannot be evicted otherwise than in due course of law.

3. The Respondent-Authorities resisted the suit and the notice of motion, interalia on the ground that the land on which the suit structure is situated is acquired and was earlier entrusted to Airport Authority of India (AAI) which is now under the management of the first Respondent - Mumbai International Airport Ltd. (MIAL). It was contended that a notice was issued,

in the year 2002 to Gautam Jain in respect of an open land admeasuring 433 sq. mtrs. right outside the boundary wall near runway No.14/32 at Domestic Airport at Santacruz and an unauthorised structure admeasuring 183 sq. mtrs. upon the Larger Land (which is forming the part of the suit premises). It was also contended that AAI issued a notice dated 23 August 2002 to hand over the quiet, vacant and peaceful possession of the suit premises. Feeling aggrieved, Gautam Jain had filed Suit No.4519/2002 against AAI inter alia seeking injunction against dispossession. Subsequent to this, by virtue of Operation Management and Development Agreement dated 4 April 2006, the exclusive, right to operate and manage the Mumbai Airport was granted to MIAL for thirty years which was followed by a Lease Deed in favour of MIAL on 26 April 2006.

4. It was contended that eviction proceedings were initiated against Gautam Jain under the provisions of Chapter VA of the Airports Authority of India Act, 1994 (AAI Act, for short). During the pendency of these proceedings, Gautam Jain expired on 3 April 2013 and his legal representatives, including one Sharad Gautamchand Jain, Sarla Devi and Sanika Jain were brought on record. As the Respondent had initiated the due process of law, Suit No.4519/2002 came to be disposed of on 13 October 2017. After this, the eviction proceedings culminated in the order of eviction dated 31 March 2022 which has not been carried any further. It was thus contended that the order has

attained finality and as the Respondent – Authority have taken recourse to the appropriate legal remedy, the injunction has rightly been refused.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Appellant has strenuously urged that there are several documents to indicate that the Appellant is in settled possession of the suit premises. The learned counsel further submitted that the Appellant is not claiming any right, title or interest in the land. It is submitted that only claim is in respect of the suit structure standing on a plot of land admeasuring 12 ft x 22 ft. It is submitted that the said structure has been agreed to be purchased by the Appellant from the then occupier Late Gautam Jain and therefore, the Appellant being in settled possession, is entitled to protection. It is submitted that relief was sought before the trial Court of an injunction restraining the Respondent – Authority from evicting the Appellant from the suit premises, otherwise than in due course of law, which ought to have been granted.

7. The learned counsel has taken me through various documents to show that the same clearly establish the settled possession of the Appellant. It is submitted that the law protects

even the trespassers in settled possession from eviction otherwise than in due course of law.

8. Mr. Naik, the learned Senior counsel for the Respondents has submitted that already the Respondent – Authority has taken recourse to the legal remedy and is trying to obtain possession from the year 2002. It is submitted that the eviction order passed by the Competent Authority under the AAI Act has attained finality under Section 28 M of the said Act. It is submitted that said order has not been carried in appeal provided under Section 28 K of the said Act and therefore the Appellant who is claiming through Gautam Jain, cannot have any right, title or interest in the structure or its protection.

9. I have carefully considered the rival circumstances and the submissions made.

10. The description of the property as mentioned in the plaint is not at all satisfactory. Except that the structure is admeasuring 12 ft. x 22 ft. made partly of BM Wall, Patra Wall and A. C. Sheet Roof, there is no other description to identify the suit structure. Be that as it may, the Appellant is not claiming any right, title or interest in the land, belonging to Respondent - Authority. The claim is only in respect of super structure on the basis of sale deed dated 12 October 2012 which is not a registered document and not even properly stamped. The record discloses that the

Respondent – Authority had initiated eviction proceedings under Section 28 C of the said Act and eviction order was passed against the legal representatives of Gautam Jain on 31 March 2022. It is undisputed that the said order has attained finality as the same is not carried any further. Thus, it cannot be said that the Respondents are trying to evict the Appellant otherwise than in due course of law as the Respondents have already taken recourse to the eviction proceedings. The learned counsel for the Appellant has submitted that the structure being prior to 1 January 2000 is protected under the policy of the State Government. However, it was fairly not disputed that the subject land is belonging to Central Government and is under the management of the MIAL and the policy of the State Government would not exfacie apply.

11. A perusal of the eviction order shows that the documents on which reliance is placed, on behalf of the Appellant, have already been considered by the Competent Authority except the two documents namely, (i) an acknowledgment of the intimation given by the Appellant under Rule 9 of the Rules, framed under the Maharashtra Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2017 (2017 Act, for short) and (ii) a document issued by the Health Department of Municipal Corporation of Greater Mumbai (MCGM), which is in the form of a license in favour of M/s. Balaji Granites and Tiles which is valid from 13 July 2022 to 12 July 2023.

12. I have considered these documents. The first is a mere acknowledgment of the intimation issued by the Appellant under Rule 9 of the Rules framed under the 2017 Act. Clause 6 of the said intimation reads thus-

6. This is just an acknowledgment of the intimation application and not a proof of existence of the business and the place of business as mention in the intimation application. It shall be the responsibility of the employer to obtain the entire prior and post permission, permit, licenses mandatory for the conduct of the said business and for the place of business from the concerned authority.

It can thus be seen that even under the said acknowledgment, it is the responsibility of the employer to obtain necessary permissions, permit, licenses mandatory for conduct of the said business and for the place of the business, from the concerned authority. In so far as the license issued by the Health Department of MCGM is concerned, it is obtained on 13 July 2022 and shortly thereafter the suit is filed on 16 July 2022. Thus, neither of these documents, can take the case of the Appellant any further.

13. A specific query was made to the learned counsel for the Appellant, as to whether the amount of consideration of Rs.18,27,000/- shown in the Agreement to Sale dated 12 October 2012 was paid in cash or there is any Bank entry, evidencing such payment. The learned counsel submitted that he is unable to

make any statement for want of instructions whether there is any document evidencing such payment, made to the vendor Mr. Gautam Jain.

14. Thus, no case for interference is made out. The appeal is without any merit and is accordingly dismissed, with no order as to costs.

15. Pending civil application is also disposed of

C.V. BHADANG, J.