

VAISHALI
ANIL
TIKAM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11326 of 2022**

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**Paradise Construction Mumbai
Vs.**

...Petitioner

Santoshi Maa Mandir and Ors.

...Respondents

**WITH
WRIT PETITION No. 11298 OF 2022**

**Jai Santoshi Maa CHS
Vs.**

...Petitioner

Paradise Construction and Ors.

...Respondents

Mr. Amogh Singh a/w. Mr. Nivit Srivastava a/w. Ms. Sneha Patil a/w.
Mr. Saurabh Kshirsagar i/b. Maniar Srivastava Associates for Petitioner
in WP 11298 of 2022

Mr. Pravin Samdani, Senior Advocate a/w. Pradeep Baghra a/w. Ms.
Priyanka Chaddha i/b. Wadia Ghandy & Co. for Petitioner in WP
11326/2022

Dr. Pawan Pandey a/w. C.J. Chauhan a/w. Mr. Ramlakhan Pal for
Respondent No.1 in WP 11326/2022

Mr. Sandesh D. Patil a/w. P.S. Gole for Respondent -SRA in both
matters.

Mr. Pravin Samdani, Senior Advocate a/w. Pradeep Bakhra a/w. Ms.
Priyanka Chaddha i/b. Wadia ghandy & Co. for Respondent No.1 in WP
11298/2022

**CORAM : SANDEEP K. SHINDE, J.
WEDNESDAY, 28TH SEPTEMBER, 2022.**

P.C. :

1. Shri., Santoshi Maa, Viraj Maan, Shri. Santoshi Maa
Mandir-Diety, respondent no.1-plaintiffs, instituted S.C. Suit No.
219/2022, seeking a declaratory Decree under Section 34 of the Specific
Relief Act, as to her title to the suit property described in para-1 of the
plaint, against M/s. Paradise Construction-defendant, has matured by

adverse possession. Pending suit, plaintiffs moved Chamber Summons NO. 784/2022 for two reliefs; (i) to implead Slum Rehabilitation Authority through its CEO and Tahsildar as defendant no.2; and (ii) temporary restraint order against the defendant from evicting or interfering with her possession in the suit property. The trial Court, vide order dated 29th August, 2022 granted first prayer but declined (ii) prayer, reserving plaintiff's liberty to take out Notice of Motion for claiming relief of temporary injunction. However, the learned trial Court, directed the parties to maintain status-quo, in respect of the suit property till the next date. Feeling aggrieved and dissatisfied by the said order, M/s. Paradise Constructions-defendant herein, has filed this petition.

2. Heard Mr. Pravin Samdani, learned Senior Counsel for the petitioner and Dr. Pawan Pandey Learned Counsel for the contesting respondents.

3. Suit property comprises of a temporary structure, storeroom and kitchen spread over in area admeasuring 237.78 sq.mtrs on a part of a land, CTS No. 1327 (A)(pt) (hereinafter called "the said property" for short). That vide Notification dated 26th December, 1985 issued under Section 4 of the Maharashtra Slum Areas Act, ("Slum Act" for short), Deputy Collector declared area of the plot CTS 1327 (A) to be the slum area. It is occupied by slum dwellers. In the due course, S.R.A. sanctioned, Slum Rehabilitation Scheme on CTS No.1327A, that was

proposed by the petitioners as its' owners. Even Society, of the slum dwellers, i.e. Jai Santoshi Mata Mandir CHS (Proposed), through General Body appointed petitioner as the Developer for development of the land i.e. Survey No.1327-A. Upon conducting survey, Deputy Collector published Draft Annexure-II on 22nd July, 2010 for declaring eligibility of the slum dwellers on the basis of the documents submitted by them. On 6th July, 2012 the final Annexure-II, came to be issued by the Office of the Deputy Collector, Borivali. It contains the name of Shree Santoshi Maa Mandir, as well as, names of members of Solanki Family as Trustees of the Trust of the respondents-plaintiff, at serial nos. 154A and 155.

3. It appears that, the respondent no.1-plaintiffs, acknowledged the S.R.S. being implemented by the petitioners and submitted its' documents for proving eligibility. The documents at Exhibits-Y, Z and AA annexed to the petition, indeed show that, members of Solanki Family, who are claiming interest in the respondent no.1-plaintiffs, have acknowledged the Slum Rehabilitation Scheme, implemented by the petitioners and also participated in the same by submitting documents for the purpose of proving their eligibility.

4. It is not in dispute that the Respondent -Plaintiff, filed an appeal No. 43/2022 before the Additional Collector and the Competent Authority, Western Suburb, praying for exclusion of the said temple and

its structures from the Annexure II. That appeal was dismissed on 23rd June, 2022. Thereafter, on 5th July, 2022, Respondent No.1 filed Chamber Summons No. 784/2022 in S.C. Suit, *inter alia*, praying for an amendment of the plaint so as to implead SRA as Defendant No.2 and sought a temporary injunction from evicting from the temple.

5. Indisputably, on 17th June, 2022, the Tahasildar directed the Sevedars of temple to hand over the vacant possession of temple structure. Against that, the Respondent No.1 filed an appeal before the AGRC. The said Appeal was dismissed on 15th July, 2022, *inter alia*, holding that, in case a stay is granted, the same will affect rehabilitation of 158 occupants and their families, who were residing in the slum area for almost 40-50 years.

6. In the backdrop of the aforesaid facts, in my view, the order of the Trial court, directing the parties to maintain status quo clearly counters the mandate of Section 42 of the Slum Act. Prima facie, therefore, the order dated 29th August, 2022 directing the parties to maintain status quo was without jurisdiction. At this stage, learned counsel appearing for the Respondent No.1 submitted that in view of the liberty granted by the Trial court, the Respondent No.1 (plaintiff) has taken out a notice of motion for seeking temporary injunction. Learned counsel submitted that atleast till the notice of motion is heard, the property may be preserved, or else it would render the suit infructuous. I

do not find any merit in this argument for a simple reason that continuation of order, *inter alia*, directing the parties to maintain status quo would be in breach of mandate of Section 42 of the Slum Act. However, in the event, the Respondent No.1 moves a Notice of Motion seeking interim relief, the Learned Trial Court shall decide the same on own merits without being influenced by the order of this Court.

7. For the reasons stated, following is the order:

ORDER

(i) That order dated 29th August, 2022 passed in Chamber Summons No. 784/2022 in S.C. Suit No. 2191/2022 by the Judge, City Civil Court, Mumbai directing the parties to maintain status quo is quashed and set aside.

(ii) The Writ Petition is allowed and disposed of in the above terms.

(SANDEEP K. SHINDE, J.)