

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 112 OF 2023
WITH
INTERIM APPLICATION NO. 1447 OF 2023

M/s. Mansi Caterers ... Appellant
Versus
Brihanmumbai Mahanagarpalika & Anr. ... Respondents

a/w.
APPEAL FROM ORDER NO. 113 OF 2023
WITH
INTERIM APPLICATION NO. 1448 OF 2023
Mahesh Pandurang Kadam ... Appellant
Versus
Brihanmumbai Mahanagarpalika & Anr. ... Respondents

a/w.
APPEAL FROM ORDER (St.) NO. 4225 OF 2023
WITH
INTERIM APPLICATION (St.) NO. 4226 OF 2023
Jagevala Baba Pratishthan ... Appellant
Versus
Brihanmumbai Mahanagarpalika & Anr. ... Respondents

Mr. Anil S. Kharatmol for the appellant.
Ms. Smita Tondwalkar for the respondent/MCGM.
Mr. Prathamesh Jadhav, Sub-Engineer (M/W) Ward present.

CORAM: G. S. KULKARNI, J.
DATED: 14 February, 2023

P.C.

- 1.** Not on board. Upon mentioning, taken on board on a praecipe as moved on behalf of the appellants.

2. Heard learned counsel for the appellant on these three Appeals from Order.

3. The order impugned in these appeals is an order dated 31 January, 2023 passed by the learned Judge of the City Civil Court in Notice of Motions whereby the ad-interim reliefs on Notice of Motions as filed by the appellants/plaintiffs have been rejected. The challenge as raised by the appellants/plaintiffs before the City Civil Court is to a notice dated 24 June, 2022 issued by the Municipal Corporation under section 485A of the M.M.C. Act.

4. The principal contention as urged on behalf of the appellants before the Trial Court was to the effect that the appellants/plaintiffs are Project Affected Persons (PAP) and therefore the appellants/plaintiffs would be entitled for benefits as PAP's. The Municipal Corporation contested such case of the appellants contending that the appellants/plaintiffs in fact have encroached on the land belonging to the Municipal Corporation on which work has progressed for construction of staff quarters. She has submitted that there were about 132 persons who had illegally encroached on the Municipal Corporation's land and who have been removed, except for these three appellants who without a semblance of right to occupy the land of the Municipal Corporation are obstructing the development being undertaken for a public purpose.

5. Learned counsel for the appellants fairly submits that the land in question belongs to the Corporation and it is not a slum land. Hence, no protection could be claimed by the appellants under any slum policy. He has also submitted that there are no documents to show that the appellants in any manner were allotted the said municipal land or any tenement thereon.

6. If that be the case as to how the appellants/plaintiffs could canvass the only point that they are “project affected persons” and they ought to be treated accordingly cannot be understood. Learned Trial Judge has appropriately considered the issues and has rightly observed that there is no legal right whatsoever to the appellants/plaintiffs to urge a contention that they are project affected persons. In the absence of any legal rights, the appellants cannot raise a contention of a *quid pro quo*, namely, that they be permitted to illegally occupy the said land of the Municipal Corporation to enable them to resort to appropriate remedy and seek a relief of declaration as project affected persons. The appellants cannot take such conditional position against the Corporation so as to not vacate their structures and obstruct the public project. There is no such legal right of the appellants nor such contentions can be recognized in law.

7. In the above circumstances, learned trial Judge has correctly recorded in paragraph 4 of the impugned order that no prima facie case whatever has been made out by the appellants/plaintiffs for grant of any ad-interim protection. In

fact the balance of convenience was in favour of the Municipal Corporation which is undertaking the project on its own land and is constructing housing complex for its employees.

8. In the above circumstances, Appeals from Order are wholly devoid of merits. They are hence rejected.

9. The appellants shall hand over the vacant possession of the premises within a period of two weeks from today. There shall not be any extension of time for vacating the premises.

10. In view of disposal of Appeals from Order, Interim Applications do not survive. They are accordingly disposed of.

G. S. KULKARNI, J