

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

**APPEAL FROM ORDER NO. 630 OF 2023
WITH
INTERIM APPLICATION NO. 14176 OF 2023**

SANTOSH
SUBHASH
KULKARNI

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Pervin Homi Irani through COA Shahzad
Homi Irani

...Appellant

Versus

Municipal Corporation of Greater Mumbai
and anr.

...Respondents

Mr. Sanjay Shah, a/w Mayur Agarwal, Rahul Jain, Rajesh
Shah and Neha Thakkar, i/b Arshil Shah, for the
Appellant.

Mr. Rajeev Chavan, Senior Advocate, a/w Smita Tondwalkar,
for the Respondent/MCGM.

CORAM: N. J. JAMADAR, J.

DATED : 9th AUGUST, 2023

Order:-

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 26th July, 2023 passed by the learned Judge, City Civil Court in Notice of Motion No.1188 of 2021 in LC Suit No.1914 of 2022, whereby the learned Judge dismissed the Notice of Motion taken out by the plaintiff – appellant to restrain the Municipal Corporation Greater Mumbai (MCGM) and its officers from taking action pursuant to the notice dated 18th March, 2021 directing the plaintiff to vacate the premises admeasuring 1020 sq. ft.

situated at Mahalaxmi, which was initially allotted to the father of the plaintiff as vacant land tenancy vide No.115 (VLT).

3. The substance of the plaintiff's case is that the vacant land tenancy was initially granted in favour of the plaintiff's father, in the year 1940. After the demise of the plaintiff's father on 15th October, 1963 the VLT came to be attorned in favour of the plaintiff's mother. The plaintiff, after his mother passed away, made an application to the authorities to attorn the tenancy in favour of the plaintiff. The defendants did not initiate the requisite steps. Instead on 4th September, 2020, a notice was issued seeking possession of the premises on the ground that the plaintiff had sublet the suit premises and the premise was otherwise also required for a public purpose. This was followed by a termination notice dated 18th March, 2021.

4. The said termination notice came to be challenged by the plaintiff by instituting the instant suit. By the impugned order, the learned Judge was inclined to reject the prayer for interim relief opining, *inter alia*, that the very case of the plaintiff indicated that during the lifetime of the plaintiff's mother itself the possession of the suit premises was parted with and in view of the provisions contained in Section 41(ha) of the Specific

Relief Act, 1963, injunction to restrain completion of infrastructure project cannot be granted.

5. Mr. Shah, the learned Counsel for the appellant, would submit that after the demise of the plaintiff's mother though the plaintiff had submitted an application for attornment of the tenancy, the same has not been decided. Nor the opportunity of hearing as envisaged by Section 105B(2) of the Mumbai Municipal Corporation Act, 1888 ("the MMC Act, 1888") was given to the appellant. If the respondents – defendants require the suit premises for a public purpose, the plaintiff – appellant is not averse to part with the same, provided the plaintiff's claim for attornment and grant of benefits upon the resumption of the premises for the public purpose are extended to the appellant – plaintiff.

6. As against this, Mr. Chavan, the learned Senior Advocate for the respondent/MCGM would submit that the learned Judge, City Civil Court, has ascribed reasons in support of the impugned order and recorded a finding that the plaintiff's mother had created third party rights in the suit premises as back as the year 1975. In the circumstances, no case for grant of protection is made out, urged Mr. Chavan.

7. The material on record, *prima facie*, indicates that the plaintiff's father was in possession of the suit premises as a tenant of the vacant land since the year 1940. Tenancy came to be attorned in the name of the plaintiff's mother. After the demise of the plaintiff's mother, the plaintiff had sought attornment of tenancy. Since the premises is required for a public purpose as indicated in the notice dated 4th September, 2020 the question as to whether the plaintiff's mother, during her lifetime, or, for that matter, the plaintiff had parted with possession of the suit premises, may not be of decisive significance.

8. Undoubtedly, in view of the nature of the reason ascribed by the MCGM to resume the land, there is no question of restraining the MCGM from acting upon the impugned notice. The proper course, in such situation, would be to allow the plaintiff – appellant to make an appropriate application to the competent authority of the MCGM for considering the prayer for attornment of tenancy and grant of benefits admissible upon resumption of the land for the public purpose.

9. In view of the above, the appeal stands disposed with liberty to the plaintiff – appellant to make an appropriate application to the competent officer of the MCGM for the

attornment of the tenancy and grant of benefits upon resumption of the suit premises for public purpose.

10. In the event such an application is made within a period of two weeks, the competent authority shall decide the same within a period of four weeks thereafter.

11. The fact that in the intervening period the plaintiff – appellant either hands over the suit premises or is otherwise dispossessed of the suit premises, would not be an impediment in considering the prayer of the plaintiff for attornment of tenancy and grant of benefits upon resumption of the land for public purpose, as admissible in law.

12. The appeal stands disposed.

13. In view of disposal of the appeal, interim application does not survive and also stands disposed.

[N. J. JAMADAR, J.]