

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.749 OF 2023

Storewell Warehousing Company

....Appellant

V/S

Municipal Corporation of
Greater Mumbai & Ors.

....Respondents

...

Mr. Yahya Ghoghari i/w Mr. Mustafa S. Shamim Ms. Apeksha Sharma, Ms.
Shelly Mehta i/b M/s. Shamim & Co. for the Appellant.

Ms. Smita V. Tondwalkar for Respondent Nos.1 to 3/MCGM.

Mr. Dharmesh Vyas a/w Mr. Mitesh Visaria for Respondent No.4.

...

CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 05, 2023.

P.C.:

1 The challenge in the present Appeal is to the order dated 18 August 2023 passed by the City Civil Court rejecting Notice of Motion No.785 of 2017 filed by the Appellant/Plaintiff for grant of temporary injunction. The Appellant/Plaintiff has instituted L.C. Suit No.409 of 2017 inter alia seeking direction against the Respondent-Municipal Corporation for allotment of Shop No.12. It appears that Shop No.12 is allotted by the Respondent-Municipal Corporation in favour of Defendant No.4 towards alternate accommodation for being project affected person. The Appellant/Plaintiff seeks allotment of Shop No.12 on the ground that he yet to be granted an alternate accommodation in respect of balance area of 488 square feet.

2 I have heard Mr. Ghoghari, the learned Counsel appearing for the Appellant, Mr. Vyas, the learned Counsel appearing for Respondent No.4 and Ms. Tondwalkar, the learned Counsel appearing for the Respondent-Municipal Corporation.

3 It appears that there are competing claims between the Plaintiff and Respondent No.4 over allotment of Shop No.12. Both Plaintiff as well as Respondent No.4 are project affected persons who are entitled to be granted the alternate accommodation in view of areas handed over by them to the Municipal Corporation. The Plaintiff is already allotted Shop Nos.10, 11 and 13 against his entitlement for alternate area of 2000 square feet. It appears that the Plaintiff is claiming entitlement for additional area of 488 square feet. There is no dispute to the position that Defendant No.4 is also entitled to be granted alternate accommodation as a project affected person. By allotment letter dated 23 January 2017 the Municipal Corporation has allotted Shop No.12 in the name of Defendant No.4.

4 Plaintiff's entitlement for allotment of Shop No.12 is required to be decided at the time of final hearing of the suit. Perusal of the terms and conditions of the allotment letter dated 23 January 2017 issued in favour of Defendant No.4 would indicate that the allotment is made on leave and license basis. In the event the Plaintiff ultimately succeeds in its suit, the Court is empowered to pass necessary orders for allotment of Shop

No.12 in the name of Plaintiff which at the moment is allotted in the name of Defendant No.4 only on leave and license basis. Till the suit is decided, Shop No.12 cannot be kept vacant for an indefinite period of time. In these circumstances, I do not see any error being committed by the City Civil Court in rejecting Plaintiff's Notice of Motion No.785 of 2017.

5 The Appeal being devoid of merits is rejected without any orders as to costs.

(SANDEEP V. MARNE, J.)