

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 889 OF 2023
IN
NOTICE OF MOTION NO. 2813 OF 2023
IN
S.C. SUIT NO. 1730 OF 2023

Gerald Shivanand Warty

...Appellant
(Orig. Plaintiff)

V/s.

Shraddha Landmark Pvt. Ltd.

...Respondent
(Orig. Defendant)

Mr. Pradip Kadam, for the Appellant.

Mr. Y.K. Tiwari a/w. Mr. Satyam R. Dubey, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 October 2023.

P.C. :

1. The challenge in the present Appeal is to the order dated 21 August 2023 passed by the City Civil Court dismissing Notice of Motion No. 2813/2023 filed by the Appellant-Plaintiff for grant of temporary injunction.

2. Appellant-Plaintiff has instituted S.C. Suit No. 1730/2023 against the sole Defendant who is the Developer in respect of Plot bearing C.T.S. No.827. In his suit, the Appellant-Plaintiff has sought injunction against the Defendant from disturbing Plaintiff's possession over the property bearing C.T.S. No.824. It is Plaintiff's contention that he is in possession of the land bearing C.T.S. No.824 and has inducted several tenants who have been paying rent to him. While Defendant has undertaken a development on adjoining plot of land bearing C.T.S. No. 827, he is disturbing Plaintiff's possession by illegally carrying out development in respect of Plot No.824 without any authority of law.

3. It appears that the City Civil Court has relied upon Intimation of Approval/Letter of Approval issued by the Slum Rehabilitation Authority (SRA) for carrying out development by the Defendant on Plot No.827. I have gone through the said Intimation of Approval, para-9 whereof reads as under :

9. Eligibility of Slum Dwellers:

The eligibility of the slum dwellers on slum plot is certified by Add. Collector (Encl./Rem.) Eastern Suburb district Mumbai, in prescribed format and issued Annexure II vide letter no. झोपुप्रा/तह.वि.क. २/कावि-४३४३८/२०२२ dated 15/11 / 2022 as at Pg. C / 51 to C / 207

In this Case, reference is requested to the letter received from Executive Engineer ('S' ward) MCGM u/no. H/31/CH/8020/314 dated 26/09/2022 for 22 nos of tenants which are affected by 18.30 m. wide D.P. Road on plot bearing CTS no.824 which is a private land (Copy as at pg. C / 185 to C / 207) and Ward Executive Engineer (S ward) has requested to accommodate these 22 nos (Res. 13 & Comm.-9) in subjected S, R. Scheme which are eligible in the said S.R. Scheme as per

the letter received from local MLA to clear the road, Architect has proposed 13 nos of eligible Residential Tenements at upper floors & 9 nos. of eligible commercial tenements at Ground floor.

Architect has not taken any benefit of land component as well as additional rehab component by adding these 22 tenants. As there are 05 nos of PAP generated after accommodate these 22 nos units. These 22 tenants are the members o Durgashtami SRA CHS society and given consent to the said developer, letter to the MCGM will be issued in regards to the land benefit to be given in future to the owne of CTS no.824 on which these 22 nos of tenant are residing.

4. It therefore cannot be stated that the development undertaken by the Defendant on Plot bearing C.T.S. No.824 is totally unauthorised. If Appellant-Plaintiff has any rights in respect of Plot No.824 and if he is aggrieved by the action of the Municipal Corporation or the SRA in granting any rights in respect of Plot No.824 in Defendant's favour, he can always file appropriate proceedings against the M.C.G.M. and SRA by challenging their permissions. As of now, some permission issued by Planning Authority is noticed under which 22 tenement holders covered by the widening of the DP road, situated at Plot bearing CTS No.824 are held eligible for rehabilitation in the project undertaken by the Defendant. If this action of the Planning Authority is believed to be erroneous by the Appellant-Plaintiff, he can challenge the Letter of Approval issued by the SRA on the basis of request sent by the M.C.G.M. In my view, therefore no *prima-facie* case is made out by the Appellant-Plaintiff.

5. Mr. Kadam, the learned counsel appearing for the Appellant would submit that neither the SRA nor MCGM have given any authority to the Developer to carry out any development or disturb the possession of the Plaintiff over the Plot bearing C.T.S. No. 824. This contention, appears to be *prima-facie* incorrect as contents of para-9 of the LOA issued by the SRA, *prima-facie* indicates that Defendant is authorised to carry out development not just on the adjoining plot bearing CTS No.827, but he is also permitted to rehabilitate 22 tenants on Plot No.824.

6. Mr. Kadam's further contention is that the settled possession of the Plaintiff cannot be disturbed without following the due process of law. He relies on judgment of Apex Court in **Rame Gowda (Dead) by LRs. V/s. M. Varadappa Naidu (Dead) by Lrs. and anr.** (2004) 1 SCC 769. Mr. Kadam has submitted that there is a separate procedure formulated by the M.C.G.M. for widening of the roads under the Bombay Municipal Corporation Act. Here again, the contention will have to be rejected in view of the specific authority granted by the SRA in favour of the Defendant to carry out rehabilitation of 22 tenements situated on Plot bearing C.T.S. No. 824. It would be therefore necessary for the Plaintiff to challenge the LOA issued by the SRA which contemplates carrying out some development on Plot bearing C.T.S. No. 824. It therefore cannot be said that there is absolutely no authority for carrying out development on Plot No.824 or that possession of the Plaintiff is being disturbed without following due process of law.

7. It must also borne in mind that Plaintiff is admittedly not even the owner. Para-9 of the LOA contemplates grant of certain benefits in favour of the owner in view of resettlement of the 22 tenements. The owner is not a party to the suit. In these circumstances, it is difficult to hold that there is *prima-facie* case made out by the Appellant-Plaintiff for grant of any temporary injunction. The City Civil Court has rightly rejected the Notice of Motion. The Appeal being devoid of merits is **dismissed** without any order as to costs.

SANDEEP V. MARNE, J .

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