

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 811 OF 2023

IN

NOTICE OF MOTION NO. 2929 OF 2023

IN

SUIT NO. 2032 OF 2023

Kalpita Enclave Co-op. Hsg Soc.
Ltd. And Ors.

...Appellants

V/s.

Municipal Corporation of
Greater Mumbai

..Respondent

Mr. Rohan Savant a/w. Mr. Abhijeet C. Mahadeokar i/by. Mr.
Diwakar Gond, for the Appellants.

Mr. Drupad S. Patil i/by. Mrs. Smita Tondwalkar, for the M.C.G.M.

CORAM : SANDEEP V. MARNE, J.

Dated : 3 October 2023.

P.C. :

1. The challenge in the present Appeal is to the order dated 14 September 2023 passed by the City Civil Court rejecting Appellant's Notice of Motion No. 2929/2023 filed seeking temporary *injunction* against the Respondent-Municipal

Corporation from taking any action in pursuance of the notice dated 14 August 2023 issued under the provisions of Sections 314 and 394 of the Mumbai Municipal Corporation Act, 1888.

2. I have heard Mr. Sawant, the learned counsel appearing for the Appellants and Mr. Patil, learned counsel appearing for the Municipal Corporation.

3. Perusal of the notice would show that the same is issued for removal of three structures namely the security cabin, entrance gate and tin sheets. Mr. Sawant, the learned counsel appearing for the Appellants would contend that the impugned notice is given on an assumption that the security cabin, entrance gate and tin sheets have been constructed on a public road. He would submit that the reservation for road on the concerned piece of land has already been deleted from the Development Plan and that therefore the concerned land can no longer be treated or used as a road. He would submit that the impugned notice has been issued at the behest of the Developer of the adjoining property.

4. While it may be true that the reservation of the concerned land for being used as road might have been deleted from the Development Plan, the fact however remains that the Municipal Corporation is the owner of the said piece of land in pursuance of conveyance executed in its favour. Thus, the

Appellant-Society, *prima-facie* does not have any right, title or interest in the said land in question. Therefore, the notice issued by the Municipal Corporation for removal of entrance gate and security cabin erected on the land owned by the Municipal Corporation cannot *prima-facie* be faulted.

5. Coming to the third structure in the form of tin sheets erected by the Appellant-Society at the end of the land which is being treated as a road and on the boundary of the adjoining plot, it is Mr. Sawant's contention that the same has been erected to ensure security from the occupants of the adjoining plot which is declared as a slum structure. Mr. Patil, on the other hand, would contend that the road on the adjoining plot of land connecting the premises of the Appellant-Society has already been offered by the Developer to the Municipal Corporation and that the tin sheets erected by the Appellant-Society is coming in the way of Municipal Corporation in permitting the members of public to use the said road. That erection of the tin sheets are acting as an obstruction to the road in question.

6. I have already seen the photographs as well as the video produced for my perusal by Mr. Sawant. It appears that the road on the adjoining plot of land has not yet been completed by the Municipal Corporation, though possession of the land covered by

the said road may have been offered by the Developer to the Municipal Corporation.

7. Mr. Sawant, the learned counsel appearing for the Appellant, on taking instructions from his clients would submit that the Appellant-Society be permitted to retain all the three structures of security cabin, entrance gate and tin sheets till the Municipal Corporation develops and completes the construction of the road on the adjoining plot of land. Such retention is sought for security measures.

8. Considering the above position, till the Municipal Corporation completes the development and construction of the road on the adjoining plot of land, the Appellant-Society can be permitted to retain all the three structures comprising of security cabin, entrance gate and the tin sheets.

9. Accordingly, the present Appeal is **disposed of** by modifying the order dated 14 September 2023 passed by the City Civil Court and by directing that the effect of the notice dated 14 August 2023 shall remain stayed only till the Municipal Corporation completes the development and construction of the road on the adjoining plot of land. The moment the development and construction of the road on the adjoining plot of land is complete, the Municipal Corporation shall give an intimation to

3 October 2023.

that effect to the Appellant-Society, who shall remove all the three structures comprising of security cabin, entrance gate and tin sheets within two weeks from date of receipt of such intimation and make available the road for use by members of the public. In the event, the Society fails to remove the security cabin, entrance gate or tin sheets after receipt of communication from the Municipal Corporation as aforestated, it will be open for the Municipal Corporation to act on the notice dated 14 August 2023 and remove the said structures without issuing any further notice.

10. All contentions of the parties including the contention that the concerned land cannot be put to use as a road are kept open. The City Civil Court shall decide the suit without being influenced by any of the observations made in the present order. Appeal is accordingly **disposed of**.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.10.04
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SANDEEP V. MARNE, J.