



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12209 OF 2023

M/s Sanyam Realtors Private Limited.
Having their office at B/5, Parekh Apartment,
Sarojini Road, Behind McDonald Hotel,
Vile Parle (West) Mumbai-400056.

...Petitioner.

Versus

1. Shyamji Bhagirathi Yadav
(since deceased)
Age-63 years.

1(a) Jadavantidevi Shyamji Yadav
Aged 65 years, Occ : Housewife

1(b) Rajendraprasad Shyamji Yadav
Aged 40 years, Occ : Business

1(c) Narsing Shyamji Yadav
Aged 32 years, Occ : Business

1(d) Pradip Shyamji Yadav
Aged 29 years, Occ : Business

All residing at Room No. G-27,
Ramnath Tiwari Compound,
Near Damodar Park, L.B.S. Marg,
Ghatkopar (West), Mumbai 400078.

2. Lalchand Purshottam Yadav
(Since deceased), Aged 56, Occ : Not
Known, residing at Ramnath Tiwari
Compound, Near Damodar park,
L.B.S. Marg, Ghatkopar (West),
Mumbai-400078.

2(a) Santoshkumar Lalchand Yadav
Age : 45 Years, Occ: Business
residing at Riya Medical Stores

Chauri Bazar, Parsipur, Sant
Rahivasi Nagar, District Badoi, U. P.

2(b) Kamladevi Sanjay Yadav

Age 51 years, Occ : Housewife
residing at Vithole Bazar, Gram Olipur,
District Allahabad, Uttar Pradesh

2(c) Arun Lalchand Yadav

Age : --- Occ : Housewife
residing at Room No. 5,
Rukmani Apartment, Badlapur
East, District – Thane -421503

3. Surendra Vishwanath Yadav

Adult, Indian inhabitant, r/at
Gram Ahipur, Post Panatipur
Zila Shantarapidan Nagar,
District Badoi, Uttar Pradesh

4. Virendra Viswanath Yadav,

Adult, Indian inhabitant, residing at
Room No. 8, A-Wing, Rukmane
Apartment, Duttwadi, Badlapur (East),
District Thane- 421503.

...Respondents.

Mr. S. U. Kamdar, Senior Advocate along with Mr. Chirag Kamdar and Ms. Sakshi Agarwal i/b Bipin Joshi for the petitioner.

Ms. Prachi Khandge, Ms. Swati Chheda i/b M.P. Vashi & Associates for respondent Nos.. 1a to 1d.

Coram : Sharmila U. Deshmukh, J.

Reserved on : November 6, 2023.

Pronounced on : November 30, 2023.

ORDER :

1. By this petition filed under Article 227 of the Constitution of

India, the challenge is to the order dated 12th September 2023 passed by the Appellate Court in Miscellaneous Appeal No.271 of 2022 reversing the trial Court's order of rejection of Exhibit-120 and directing the parties to maintain status quo in respect of the suit premises.

2. The litigation has a chequered history commencing from the year 2006 and is briefly adverted to as the previous litigation will have relevant bearing on the present issue. The Petitioner claims to be the owners of land bearing CTS No 128, 128 (1 to 8), CTS No 126, 126 (1 to 31) Ramnath Tiwari Compound, Damodar Park, L.B.S Marg, Ghatkopar, Mumbai. The Respondent No 2 is stated to have relinquished the tenancy rights in favour of the Petitioner for valuable consideration, which is under challenge by the Respondent No 1 who claims to be co-tenant, being the legal heir of the original tenant.

2.1 R.A.D. Suit No.267 of 2014 was filed by Respondent No 1 (since deceased) for a declaration *inter alia* that the agreement for relinquishing tenancy executed between the petitioner and respondent no.2 (since deceased) is illegal, null and void *abinitio* and of no binding effect on the Respondent No 1 (since deceased).

2.2 It is pleaded in that one Mathuraprasad Yadav was in possession of suit property admeasuring 9,920 square feet described in the plaint as under :

- "(I) C. T. S. No.128 comprising Sub division 1 to 8 and having 89 Khilas for tying 89 buffaloes in the said C. T. S. No. 128 at Ghatkopar (West), Mumbai.
- (II) A godown of total area of 450 sq. ft. constructed and situated in the said C.T.S No.128 (1 to 8).
- (III) A room constructed and possessed on the said C. T. S. No.128 (1 to 8) admeasuring 360 sq. ft.
- (IV) A temple of Lord Shankar named and known as Shiv Markandeya Mandir admeasuring 1000 sq.ft constructed & situated on the land comprised in C. T.S 128 (1 to 8).
- (V) A water tank admeasuring about 45 sq.ft. Situated and comprised in the land of the said C. T. S. No. 128 (1 to 8)
- (VI) A well having water also situated and comprised in the land of the C. T. S. No. 128 (1 to 8)
- (VII) The remainder of the vacant land being portions of the entire land comprised in C. T. S. No. 128 (1 to 8)"

2.3. It is pleaded that Respondent No.1, who was one of the sons of Mathuraprasad Yadav has inherited the suit property along with the other legal heirs as per the genealogy set out in the plaint and is in possession of the suit property and despite the said factual position, respondent no.2 fraudulently represented to the petitioner that he is the only tenant of suit premises and has thereby illegally

entered into an agreement for relinquishing tenancy rights of suit premises in favour of the petitioner on 26th October 2005 for a consideration of Rs.91 lakh, which agreement is claimed to be result of fraud and void abinitio.

2.4. R.A.D Suit No.267 of 2014 was initially instituted in City Civil Court as S.C Suit No 2849 of 2006 , which was decreed on 28th August, 2012, as against which the Petitioner preferred First Appeal No 2 of 2013. This Court set aside the decree with the finding that the City Civil Court had no jurisdiction to try the suit and the plaint was returned to be filed in the Small Causes Court, which was filed and numbered as R.A.D Suit No 267 of 2014.

2.5. Respondent No 1 also filed S.C.Suit No. 1542 of 2006 in the City Civil Court seeking permanent injunction restraining the Petitioner from disturbing Respondent No.1's peaceful possession of suit premises, i.e. Room No. H.No.G-27 admeasuring 450 sq.ft as described in the rough sketch annexed to the plaint.

2.6. In Notice of Motion No 1423 of 2006 filed in S.C. Suit No 1542 of 2006, while considering the interim relief of temporary injunction, the City Civil Court considered the report of Court Commissioner who was appointed as it was observed that though

Respondent No.1 claimed a particular area in their possession, there was no document showing that he was in possession of particular portion at any point of time. The City Civil Court held that Respondent No.1 is in possession of a structure situated on the southern side of Shivji Temple and Well (water tank) and granted temporary injunction in respect of structure situated on the southern side of Shivji Temple and Well admeasuring 655 square feet consisting of two rooms only and not any part exceeding thereof vide its order dated 14th October, 2008.

2.7. As against the order of 14th October, 2008, Respondent No.1 preferred an Appeal from Order No.1266 of 2008, which came to be dismissed by this Court along with connected Appeal from Order No. 1265 of 2008 holding that there is no evidence to indicate that plaintiff, i.e., respondent no.1 herein, is in possession of the land.

2.8. In S.C. Suit No 2849 of 2006, the City Civil Court by an interim order granted status quo as against which the Petitioner had filed an Appeal from Order No 436 of 2007 in this Court. By order dated 8th June, 2007, this Court permitted the Petitioner to carry out incomplete work of construction of plinth area only upto the ground level and directed the Petitioner to give an undertaking which was duly given.

2.9 By judgment dated 28th August 2012, S.C. Suit NO 1542 of 2006 came to be partly decreed restraining the petitioners from disturbing the possession of Respondent No.1 of the suit premises, i.e., House No.-27. As against this, First Appeal (stamp) No. 26382 of 2012 was preferred by the petitioner in this Court and by order dated 5th November 2012, the decree was modified by adding the words “without due process of law” in clause 2 of the final judgment of trial Court.

2.10. In view of the modification of judgment of trial Court, the petitioner filed Suit No.103 of 2014 seeking to dispossess the respondent no.1 from the premises i.e., House No. G-27, by following due process of law. The said suit is said to be pending.

2.11. In Suit No.103 of 2014, Respondent No.1 had taken out Notice of Motion No.878 of 2021 seeking *inter alia* interim mandatory injunction directing the Petitioner to reconstruct Room No G-27 stated to be demolished by the Petitioner illegally. The City Civil Court vide order dated 4th September, 2021 held that the room demolished by the Petitioner is room situated on eastern side of the Well with which Respondent No.1 has no concern and the admitted position is that the room situated on southern side of the well is not demolished and is still in existence. The City Civil Court held that the

room demolished was not the subject matter of suit and dismissed the application. Against the order of rejection, Appeal from Order No 258 of 2021 is admitted by this Court and is pending.

2.12. In R.A.D Suit No.267 of 2014, an application came to be filed below Exhibit-18 seeking interim injunction directing the petitioner to remove illegal construction done by them and restraining the Petitioner from disturbing the possession of respondent no.1, which came to be rejected by the trial Court by its order dated 30th November 2015 observing that respondent no.1 is in possession of the structure admeasuring 665 sq. ft. only and rest of the area appears to be in possession of the petitioner who has started development work in the area in their possession.

2.13. An appeal against the rejection of interim injunction was dismissed by the appellate bench on 22nd July 2016 as against which a petition bearing No.14121 of 2017 is pending adjudication before this Court.

2.14. Before the Small Causes Court, an application below Exhibit 120 came to be filed by respondent no.1 for the following reliefs :

- “a) Pending the hearing and final disposal of the suit, the defendant no.1 be ordered and directed to re-construct the Room No. G-27, which is the part of the

suit premises and of which the plaintiffs were in exclusive use and possession of the same.

- b) Pending the hearing and final disposal of the suit, the defendant no.1 to maintain status quo, in respect of the suit premises.
- c) Pending the hearing and final disposal of the suit the defendant no.1 be restrained by the injunction of this Hon'ble Court, not to demolish the said structure shown in the green colour in the said Commissioner's Report and status quo to be maintained."

2.15. The trial Court by its order dated 7th September 2022 rejected the said application on the ground of *res judicata* as the respondent no.1's application for similar relief was rejected by the City Civil Court as against which respondent no.1's challenge is pending before the High Court and as there was no *prima facie* case in favour of the Respondent No.1. Against the rejection of application below Exhibit-120, Miscellaneous Appeal No.271 of 2022 came to be filed before the appellate Court and by the impugned order dated 12th September 20223 the appellate Court partly allowed the appeal and directed the parties to maintain status quo in respect of the suit premises and restrained the petitioner from demolishing the structure on the suit premises described in prayer clause (c) of the application.

3. Heard Mr. S. U. Kamdar, learned Senior Advocate appearing

for the petitioner and Mr. Prachi Khandge, learned counsel appearing for respondent nos.1(a) to 1(d).

4. Mr. Kamdar, learned Senior Advocate for the petitioner has taken this Court minutely through the previous litigation and judgments and orders passed therein. He would submit that in S.C. Suit No.1542 of 2006, the Court has protected the premises in possession of respondent no.1, being House No G-27 identified on the basis of the Commissioner's report to which rough sketch of the premises is annexed and the premises marked in green colour is situated on the southern side of temple and Well. He submits that House No. G-27 marked in green colour as per the rough sketch has not been demolished and what has been demolished is the structure situated on eastern side of the Well marked in red colour in respect of which there was no prohibitory order. He would submit that except House No.G-27, the remaining area is in possession of petitioners on which construction of two buildings is completed and possession has been handed over and as far as third building is concerned, the same is constructed upto 10th floor. He submits that the similar relief was claimed in the application below Exhibit-18 which was rejected by the trial Court and on the same grounds, fresh application under Exhibit-120 was filed and, as such, was barred. He

submits that the admitted position is that Mathuraprasad Yadav, who was grand-father of respondent no.1, was the original tenant and there is no document to show that which family member was residing with him so as to claim any right to the tenancy. He submits that except the present R.A.D. Suit, there is no litigation in respect of the entire 9,920 sq. ft and before the City Civil Court, respondent no.1 had claimed possession only in respect of the House No.G-27. He would urge that the orders/judgments passed in various litigation between the parties would indicate that Respondent No.1 has failed to establish his *prima facie* possession over the entire 9,920 square feet premises and the protection is restricted only to House No. G-27. He would further submit that none of the licences in respect of the land are in the name of respondent no.1.

5. *Per contra* Ms. Khandge, learned counsel appearing for respondent nos.1(a) to 1(d) submits that respondent no.2 has filed Suit No.935 of 2013 claiming that he is the lawful tenant and the agreement has not come into effect. She would further submit that an order of status quo was granted by the City Civil Court on 5th May 2007 in an interim application filed in S.C. Suit No 2849 of 2006 as against which this Court in Appeal from Order permitted the Petitioner to carry out construction only upto plinth level. She

invited the attention of this Court to the Commissioner's report, which is at page 136 of the compilation of documents, and would submit that said report shows that room structure which is on the eastern side of the Well is shown as belonging to respondent no.1 who was the plaintiff in S.C. Suit No. 2849 of 2006. She submits that House G-27 has been demolished despite the undertaking given by the petitioner to this Court in the proceeding arising out of S.C. Suit No. 2849 of 2006 and that Respondent No.1 has preferred Contempt Petition No.1591 of 2022 which is pending. She would further submit that agreement of tenancy shows that tenancy was in respect of 9,920 sq. ft. and was not restricted only to the house in question. She submits that in Suit No.103 of 2014 filed by the Petitioner in City Civil Court, premises being House No. G-27 is described as a shed and a structure. She submits that the roznama of City Civil Court would indicate that the plaintiff has demolished red colour structure, which according to her is House No. G-27. She would further submit that there are rent receipts to indicate that the tenancy was in respect of 9,920 sq. feet.

6. In rejoinder, Mr. Kamdar would submit that status quo by way of interim relief was in S.C. Suit No.2849 of 2006 which was thereafter returned to be presented to the proper Court. He

contends that House No.G-27 has not been demolished and the proceedings for eviction of respondent no.1 from House No. G-27 is pending.

7. Considered the submissions and perused the record.

8. The impugned order is passed in the interim application filed under Exhibit-120 by the Respondent Nos.1(a) to (d) in the R.A.D Suit No 267 of 2014. The Respondent Nos 1(a) to (d) have pleaded that the Petitioner has demolished House No.G-27 on 18th March, 2021 and there is apprehension that another room in front of temple will also be demolished. The relief sought was direction for reconstruction of House No.G-27 and status quo in respect of suit premises and restraining order from demolishing structure shown in green colour in Commissioner's Report, the report of the Commissioner being the one filed in S.C Suit No 2849 of 2006 before the City Civil Court.

9. The submissions made across the bar raise considerable controversy as regards the identity of Room No.G-27. The contention of Mr. Kamdar is that Room No. G -27 is in existence and what is demolished is a structure on eastern side of the Well, for which there was no prohibition. On the other hand, Ms. Khandge would urge that

Room No.G-27 has been demolished and there is apprehension that structure shown in green on the Commissioner's sketch will be demolished.

10. It is therefore necessary to first identify the structure Room No. G-27 of which reconstruction is sought. Both counsel place reliance on the earlier round of litigation and the Commissioner's report submitted therein. During the hearing of the interim relief in S.C. Suit No 1542 of 2006, the City Civil Court on the basis of report of Court Commissioner held the respondent no.1 to be in possession of the structure situated on the southern side of Shivji Temple and Well (water tank) and granted temporary injunction in respect of said structure admeasuring 655 square feet consisting of two rooms only and not any part exceeding thereof vide its order dated 14th October, 2008 and the judgment dated 28th August, 2012 passed in S. C. Suit No. 1542 of 2008 restrains the Petitioner from disturbing the possession of Room No.G-27. Room No.G-27 is therefore identified in the previous litigation as the structure admeasuring about 655 square feet situated on the southern side of Temple and Well. The structure is depicted in green colour in the Commissioner's map. Pertinently, in Appeal from Order No. 1266 of 2008, this Court held that there is no evidence to indicate that respondent no.1, i.e., the

appellant therein is in possession of land.

11. It is not necessary to refer to the various orders and judgment passed In S.C.Suit No.2849 of 2006 for the reason that in the appeal preferred against the judgment and decree dated 28th August, 2012 in S.C Suit No 2849 of 2006, this Court has directed the return of plaint on the ground of jurisdictional error.

12. The first application which was filed in R.A.D Suit No 267 of 2014 below Exhibit-18 came to be rejected by the order dated 30th November 2015. The said application sought *inter alia* an injunction restraining the petitioners from disturbing Respondent No.1's possession over suit premises and from creating any third party interest in suit premises. The trial Court in that proceedings held that respondent no.1 is in possession of the structure admeasuring 655 sq. ft. only. By relying upon litigation between the parties in the City Civil Court in S.C.Suit No.1542 of 2006 and S.C. Suit No. 2849 of 2006, the trial Court held that there is no *prima facie* case made out by respondent no.1 as respondent no.1 is in possession of two rooms admeasuring 655 sq. ft. and that the petitioner has started development work on the land in their possession and there is no *prima facie* proof to show that respondent no.1 is in possession of the entire suit premises, i.e., area admeasuring 9,920 sq. ft. Appeal

against the said order came to be rejected as against which petition is pending before this Court. This Court is informed that there is no interim relief passed in the pending writ petition.

13. The application below Exhibit-120 pleads details of the litigation between the parties. It is pleaded that the petitioner has taken the law in their hands and demolished the suit structure, i.e., Room No. G-27. Relying on the sketch plan attached to the Commissioner's report, it is pleaded that the premises shown in red colour is demolished and premises shown in green colour is in existence. It is further pleaded in paragraph no.10 that there is another room in front of temple and there is apprehension that the petitioner would demolish the room structure without following the due process of law.

14. Perusal of pleadings in the application itself would indicate that a confusion is sought to be created in respect of the premises identified as Room No.G-27 in the Commissioner's report. Perusal of the rough sketch to the Commissioner's report annexed at Page 255 of the Petition would indicate that Room No.G-27 is shown as a structure consisting of two rooms situated on the southern side of temple and Well and is depicted in commissioner's report in green colour. The structure which is on the eastern side of Well is depicted

in red colour. The cause of action for the apprehension expressed in the application, is that Room No.G-27, which is depicted in red colour in the sketch, has been demolished and there is an apprehension that the green colour structure will be demolished. A comparison of the Commissioner's rough sketch with the pleadings would indicate that structures are sought to be interchanged by respondent no.1 by pleading that what is demolished is Room No. 27, whereas what is demolished is structure situated on eastern side of Well.

15. The orders passed in previous litigation discussed hereinabove reveal that Respondent No.1 was held to be in possession of Room No.G -27 which is a structure admeasuring about 655 square feet situated on the southern side of temple and Well and depicted in green colour. There is another structure depicted in red colour shown on the eastern side of Well in the sketch. There is no material on record to indicate that the structure shown on the eastern side of Well was also in possession of Respondent Nos.1(a) to 1(d). Ms. Khandge would submit that the Commissioner's sketch indicates that Respondent No.1 had claimed possession of the structure on the eastern side of Well in S.C Suit No.2849 of 2006. However, the observation of City Civil Court in the order dated 14th October, 2008 passed in Notice of Motion No 1423 of 2006 in S.C Suit

No 1542 of 2006 is sufficient answer to this submission as the Court had held that the statement has been incorporated by the Commissioner at the behest of Respondent No.1.

16. The application below Exhibit-120 seeks to describe Room No.G-27 as the structure demolished situated on the eastern side of Well depicted in red colour and claims possession of the room situated on the southern side of Temple and Well as another structure depicted in green colour. However, upon a careful perusal of sketch annexed to the Commissioner's report at Page 255 of the Petition, it is evident that Room No. G-27 is the premises situated on the southern side of temple and Well and is depicted in green colour. By the Respondent no.1's own pleadings, the room in front of temple is intact and as such the structure which is intact when compared with the Commissioner's Report is Room No.G-27.

17. The pleadings in S.C.Suit No. 1542 of 2016 injunct the petitioner from dispossessing respondent no.1 from Room No.G-27 without following the due process of law and the admitted position is that the petitioner has filed Suit No.103 of 2014 before the City Civil Court and the same is pending. Pleadings in the application would indicate that after having suffered a rejection in an application below Exhibit-18 an illusory cause of action is sought to be shown

that Room No.G-27 has been demolished so as to seek an order of reconstruction of Room No.G-27. Prayer clause (a) of the said application cannot be granted for the simple reason that what has been demolished is a structure on the eastern side of Well depicted in red colour and that Room No.G-27 which is depicted in green colour is intact. It appears that confusion is sought to be created to enable Respondent No.1(a) to 1(d) to reconstruct the structure which was situated on the eastern side of Well and claim right of possession in respect of the same.

18. It is *prima facie* evident from the Commissioner's report that the structure depicted in green colour is Room No.G-27. The judgment rendered by the City Civil Court in S.C. Suit No 1542 of 2006 holds that Respondent No.1 is in possession of Room No G 27 and restrains the Petitioner from disturbing the Respondent No 1's possession of Room No.G-27. As Respondent No.1(a) to 1(d) had failed to *prima facie* demonstrate that the structure demolished is Room No. G-27, no interim relief of reconstructing Room No.G-27 could have been granted.

19. As regards the interim relief of status quo in respect of the suit premises, i.e., area admeasuring 9,920 sq. ft, there is no material produced on record to demonstrate that respondent no.1 was in

possession of the suit premises. The City Civil Court in S.C. Suit No. 1542 of 2006 categorically holds respondent no.1 to be in possession of only Room No.G-27, which is as indicated above is in tact. Further this Court in Appeal from Order No.1266 of 2008 has held that there is no evidence to indicate that the Appellant therein, i.e., Respondent No 1 herein is in possession of the land.

20. It is settled that the party seeking injunction has to demonstrate a *prima facie* case of possession apart from the aspect of balance of convenience and irreparable loss. If the application below Exhibit-120 is perused, there is not even a pleading that the Respondent Nos.1(a) to 1(d) are in possession of the suit premises, viz., 9,920 square feet. Except setting out the details of various litigation, there is no case of possession of the suit premises made out in the application. On the contrary, record would indicate that apart from Room No.G-27 which is situated on the southern side of temple and Well, the remaining area is in possession of the petitioner, who has constructed two buildings and the construction of third building is underway. The Trial Court in the application under Exhibit-18 filed in R.A.D Suit No 267 of 2014 rejected the application of Respondent No 1(a) to 1(d) seeking direction to the Petitioner to remove the illegal construction done by them in the suit premises.

The Trial Court held that Respondent No.1(a) to 1(d) are in possession of structure admeasuring only 655 square feet and rest of the area is in possession of the Petitioner. The Appellate Court has not disturbed the finding and the Petition filed in this Court against the concurrent finding is pending.

21. The relief of status quo was sought on the misplaced apprehension that the structure which is shown in green colour will be demolished. The said prayer which is prayer clause (c) is contrary to prayer clause (a) which is re-construction of Room No. G-27, as Room No.G-27 is depicted in green colour. For the purpose of seeking relief of status quo in respect of the entire suit premises, it will be necessary for the respondents to demonstrate *prima facie* that they are in possession of the suit premises and it is necessary to protect the status quo ante. As is evident from the discussion above, in various litigation between the parties, there is no finding that Respondent no.1 is in possession of the entire suit premises. On the contrary, the finding of City Civil Court in S.C. Suit No.1542 of 2006 is that Respondent No.1 is in possession of Room No.G-27. At the most, respondent no.1 has *prima facie* demonstrated that they are in possession of Room No. G-27, which is intact.

22. The trial Court while rejecting the application for temporary

injunction considered facts of all the earlier litigation and noticed that similar relief was sought in Notice of Motion No. 878 of 2021 in S. C. Suit No.103 of 2014 which came to be rejected as against which an appeal is pending in the High Court. The trial Court rightly held that respondent no.1 has not come with clean hands and that there is no *prima facie* case made out, and rejected the application.

23. The appellate Court observed that the deceased respondent no.1 and deceased respondent no.2 were in possession of the tenanted premises and without there being an agreement amongst all the heirs, respondent no.2 alone was not entitled to surrender the tenancy rights to the landlord. The appellate Court therefore held that respondent no.1 has *prima facie* proved his right in the suit premises and he is in possession. The appellate Court further held that if respondent no.1 is dispossessed of the premises or suit premises is demolished, respondent no.1 would suffer irreparable loss and on the contrary, if the prohibitory injunction is granted the petitioner will not suffer any loss that cannot be compensated in terms of money. The appellate Court held that it is not proper to direct restoration of Room No.G-27 which is stated to be demolished and that monetary compensation can be claimed. As regards the order passed in Notice of Motion No. 878 of 2021 by the City Civil

Court, the appellate Court held that the same is not decided on merits but rejected by observing that Room No. G-27 is not the subject matter of suit. The appellate Court held that respondent no.1 has prayed for an order directing the petitioner not to demolish the structure of suit premises which was not considered by any of the courts before which the parties were litigating and passed the following order :

- "1. Appeal is partly allowed with costs.*
- 2. Order of 7/9/2020 below Exh. 120 in RAD Suit No. 267 of 2014 is set aside.*
- 3. Application at Exh. 120 in RAD Suit No. 267 of 2014 is partly allowed.*
- 4. Both parties are directed to maintain status quo in respect of the suit premises.*
- 5. Defendant no.1 by order of temporary injunction is restrained from demolishing the structure on the suit premises more particularly as described in prayer clause "C" of the application."*

24. The Appellate Court while holding the aspect of possession of suit premises in favour of Respondent Nos.1(a) to (d) got swayed by the argument that Respondent No.2 alone was not entitled to surrender tenancy rights. However, the Appellate Court failed to consider that respondent No.1 has signed the tenancy agreement as a witness.

25. The Appellate Court was not right in holding the aspect of possession in favour of the Respondent Nos.1(a) to (d) by observing that *prima facie* rights were proved in the suit premises. Even if the rights were *prima facie* proved, the issue of *de facto* possession had to be considered for grant of injunction. The admitted position is that in the year 2006, there was an agreement of surrender of tenancy by the Respondent No.2 and thereafter the Petitioner had commenced the development on the remaining area except the area of Room No.G- 27. The construction of two buildings has been completed and the construction of third building is underway and third party rights have already been created. The factual position of construction *prima facie* indicates the possession of Petitioner of the suit premises except in respect of area of Room No.G-27. That being so, the finding of Appellate Court that Respondent No. 1(a) to 1(d) are in possession of the suit premises is clearly contrary to the admitted position.

26. The development on the suit premises was to the knowledge of Respondent No.1(a) to (d). The cause of action for seeking relief of status quo was the claim of demolition of Room No.G-27 and apprehension that there would be demolition of structure depicted in green colour. It was therefore incumbent upon appellate Court to

first resolve the dispute as regards the identity of Room No.G-27. There is no finding in that respect and the Appellate Court has accepted the argument of respondent no.1 that Room No.G-27 has been demolished and went one step further and directed the parties to maintain status quo in respect of the suit premises which has led to the stoppage of entire development work being carried out on the land. The Appellate Court observed that the relief sought is order of status quo not to demolish the structure on the suit premises. Having observed thus, the Appellate Court has granted status quo not in respect of the structure but in respect of the suit premises i.e. 9,920 square feet which is unsustainable. Clause 5 of the impugned order restrained the petitioner from demolishing structure on suit premises which is shown in green colour in commissioner's report. The possession of respondent nos. 1(a) to 1(d) in respect of structure depicted in green colour in the Commissioner's map annexed to the report has been established and identified as Room No.G-27. As such the appellate Court has rightly issued the restraining order in respect of House No.G-27 depicted in green colour.

27. For the same relief of reconstruction of Room No.G-27, the Respondent No.1 had filed an interim application In Suit No.103 of

2014, and there is categorical finding of the City Civil Court vide order dated 4th September, 2021 that the room demolished by the Petitioner is room situated on eastern side of Well with which Respondent No.1 has no concern and the admitted position is that the room situated on southern side of Well is not demolished and is still in existence. After having failed to obtain identical relief of reconstruction of Room No.G-27 in the proceedings before the City Civil Court, Respondent Nos.1(a) to (d) approached the Small Causes Court for the same relief, which was clearly barred.

28. For the purpose of grant of any interim relief, apart from a *prima facie* case it is also necessary to consider the balance of convenience and irreparable loss which would be caused to the party by grant or refusal of interim relief. The appellate Court held that if the prohibitory injunction is granted, petitioner will not suffer any loss that cannot be compensated in terms of money. The appellate Court did not appreciate the factual position of the suit premises viz completion of two buildings and underway construction of the third building. Third party rights had already been created and grant of any prohibitory injunction in the form of status quo in respect of suit premises excepting area of Room No.G-27 would have caused irreparable loss to the petitioner. The balance of convenience is

clearly in favour of the petitioner.

29. In light of the above, clause (4) of the impugned order deserves to be quashed and set aside. Accordingly, clause (4) of the impugned order dated 12th September 2023 directing parties to maintain status quo in respect of suit premises is quashed and set aside.

[Sharmila U. Deshmukh, J.]

30. At this stage, request is made for stay of the present order. I am not inclined to grant stay as the process of development of property has come to a standstill by virtue of the impugned order. Request for stay is rejected.

[Sharmila U. Deshmukh, J.]