

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.916 OF 2023

Ranchhoddas D. Patani
Through LRs Nitesh R. Patani & Ors.Appellants
V/S
Mumbai Housing and area
Development Board & Anr.Respondents
...

Mr. Sanjeev Kadam a/w Mr. Ashish M. Verma for the Appellants.
Mr. P.G. Lad a/w Ms. Sayli Apte, Ms. Shreya Shah for Respondent no.1-
MHADA.

Mr. Pramod Gajbhiye, Deputy Engineer, MHADA present in Court.
...

CORAM: SANDEEP V. MARNE, J.
DATE : NOVEMBER 08, 2023.

P.C.:

1 The challenge in the present Appeal is to the order dated 20 October 2023 passed by the City Civil Court refusing ad-interim relief in Notice of Motion No.3676 of 2023. The said Motion is filed by Appellants/Plaintiffs alleging breach of injunction order passed by the City Civil Court on 5 April 2012. The dispute between the Appellants/Plaintiffs and MHADA appears to be with regard to the exact location of the respective lands which are covered by common CTS No.1653. It appears that earlier the land was assigned Survey No.125, Hissa No.9. After the land acquisition proceedings, the land bearing

Survey No.125, Hissa No.9 was sub-divided into three parts. Survey No.125, Hissa No.9A/1 admeasuring 0.21.5 gunthas remained in the name of Ranchhoddas Damodar Patani, land bearing Survey No.125, Hssa No.9/B admeasuring 0.29 gunthas was acquired for western express highway and land bearing Survey No.125 9A/2 admeasuring 0.12.5 gunthas was given to MHADA. It appears that the entire land bearing old Survey No.125 Hissa 9 has been assigned common City Survey No.1653. The property card extract in respect of CTS No.1653 shows that MHADA's name is mutated only in respect of area admeasuring 1264.31 square meters. The balance land would either remain in the ownership/possession of Ranchhoddas Damodar Patani/his heirs/successors-in-title or for western express highway. It is Appellant/Plaintiff's case that MHADA is encroaching upon his portion of the land when in fact MHADA's entitlement is only in respect of land admeasuring 1264.31 square meters.

2 I believe the problem can be solved by carrying out measurement of the land. For that purpose Appellants/Plaintiffs needs to file an application under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908 for appointment of Court Commissioner for carrying out measurement. Once the entire CTS No.1653 is measured and MHADA's portion of land admeasuring 1264.31 square meters is demarcated the entire problem is likely to be solved.

3 Accordingly, the present Appeal is disposed of with liberty to the Appellants/Plaintiffs to move an application before the City Civil Court for appointment of Court Commissioner for measurement of the land. It appears that by issuing Notices, MHADA has already demolished the security cabin, sign board and some additional structures standing at the land in which Appellants/Plaintiffs claim possession. It appears that MHADA is not likely to immediately start any construction on the land. Mr. Lad, after taking instructions from MHADA officials present in the Court, confirm this position. Therefore, no further order needs to be passed in the present Appeal. The Appellants/Plaintiffs shall have the land measured and accordingly the City Civil Court shall proceed to decide the Notice of Motion Nos.949 of 2012 and 3676 of 2023 together.

4 With the above observations, the Appeal is disposed of accordingly.

(SANDEEP V. MARNE, J.)