

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 62 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 616 OF 2024
IN
APPEAL FROM ORDER NO. 62 OF 2024**

Narayan Atmaram Bhandari ...Appellant
vs.
The State of Maharashtra Thr.
Government Pleader and Others ...Respondents

Mr. Drupad Patil i/by Shailesh Rai - Advocate for the Appellant

Mr. A. R. Patil - AGP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 17th JANUARY 2024

P. C. :-

1. Heard learned Advocate Shri Drupad Patil for the Appellant/Plaintiff and learned AGP Shri A. R. Patil for the Respondent.

2. Judge City Civil and Sessions Court as per Order dated 11/01/2024 passed in draft Notice of Motion has refused to grant ad-interim relief. It was moved by the Appellant-Plaintiff. The correctness of this Order is challenged by way of this proceeding. By consent, this Appeal from Order is taken for final disposal at an admission stage.

3. When the learned trial Judge decided draft Notice of Motion, the pleadings were not over. The Respondents-Defendants have not filed replies but they have chosen to oppose the ad-interim relief orally. Reference finds place in para no. 6 of the impugned order. So no doubt it is true that even if replies are not filed still the Court can refuse ad-interim relief, if no case is made out by the Plaintiff. It is true that when Writ Petition (L) No. 29431 of 2023 filed earlier by the present Appellant, was disposed of on 01/12/2023, at page no. 118. Liberty was granted to the present Appellant to file the Civil suit. One of the reason was disputed questions of the facts were noticed by this Court. In fact learned trial Judge while refusing ad-interim relief ought to have considered those observations.

4. In the suit there is challenge to the notice dated 03/02/2022 issued by the Deputy Collector, on page no. 75 and orders passed subsequently. Initially, the Appellant challenged this notice before Additional Commissioner and it was remanded on 17/05/2022 and after remand and after hearing both the sides, Deputy Collector refuses to interfere in the notice, on 23/09/2022.

5. Again appeal was filed before the additional

Commissioner and appeal was dismissed on 20/09/2023, at page no. 117. Then the writ petition was filed as mentioned above.

6. With assistance of both of them, I have perused the observations in the orders passed by Revenue Officers and the observations made by learned trial Judge in the impugned order. While refusing the appeal, the revenue officials have observed that the address mentioned in the documents filed by the Appellant on one hand and address on which the structure stands on the other hand, there is variance.

7. In support of the claim for residence at relevant site, the Appellant relied upon the following documents:-

- a) the entry in the 02.07.2000 survey by Slum Rehabilitation Authority showing the address as same address mentioned in the main notice.
- b) the identity card issued by the Election Commissioner and
- c) Address mentioned in the electricity bill.

8. According to the learned Advocate for the Appellant, Revenue officials have arrived at the said conclusion without giving reasons for the said decision. Whereas learned trial Judge reproduced submission made on behalf of the

Respondent in para no. 6. The conclusion drawn by learned Judge finds place in para nos. 10 to 17. One of the contention raised on behalf of the Respondents is that few of the documents relied upon by the Plaintiff from page nos. 29 to 35 were cancelled by the Defendants by virtue of the Order dated 15/07/2000. Further contention made was these documents were considered in the appeal no. 516 of 2022.

9. Learned Advocate for the Appellant disputed this submission on two grounds:-

- a) Those documents were not placed before the trial Court on behalf of Respondents.
- b) The alleged Order of the cancellation dated 15/07/2000 pertains to six structures which were already demolished. Whereas ad-interim relief is claimed in respect of remaining one structure.

10. The contention is learned Trial Judge ought not to have refused ad-interim relief only on the basis of the oral submissions and till the time reply was to be filed, it could have continued ad-interim relief. The ad-interim relief was granted by the Writ Court on 01/12/2023, at page no. 118, it is for six weeks from 01/12/2023 and it was about to expire on 15/01/2024. When the claim of the cancellation of the order is disputed by the Appellant, learned AGP submitted that they can

substantiate this submission by way of reply.

11. So without going into merits of the matter, I think the matter can be remanded to the trial Court for fresh consideration and limited protection can be granted. At this stage, it can be certainly be said that learned trial Judge on one hand, considered the submission and rejected the ad-interim relief. Whereas on the other hand, overlooked the fact that the oral submissions were not substantiated by documents.

12. In view of that I am intend to remand the matter by setting aside the impugned Order. Hence the Order :-

ORDER

- a) Appeal from Order is allowed.
- b) The Order dated 11/01/2024 passed by the Judge City Civil in draft Notice of Motion is set aside with following directions:-
 - i) Let both the parties to maintain the status quo as existing at 05.00 p.m. today in respect of one structure described in para no. 4 of the plaint for period of six weeks from today.
 - ii) The Respondents are at liberty to file their replies within two weeks from today. Then notice of motion be decided finally within four weeks.

iii) In case, notice of motion could not be decided within six weeks, the Plaintiff is at liberty to ask for extension of the status quo before the trial Court and trial Court to decide it on the basis of the merits depending upon to what extent the parties have co-operated for early disposal.

iv) The trial Court is at liberty to decide the motion as per the merits without influenced by the observations made herein above.

13. All contention of both the parties are kept open.

14. Accordingly, interim application is disposed of.

[S. M. MODAK, J.]