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

WRIT PETITION NO. 3737 OF 2024

George Lawrence Godinho

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents

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- Mr. Mayur Khandeparkar a/w. Mr. D.D. Singh, Mr. Shivam Singh and Mr. D.K. Shukla, Advocates for Petitioner.
 - Ms. V.R. Raje, AGP for Respondent Nos.1 and 3.
 - Mr. Kaustubh Patil a/w. Mr. Arvind Giriraj, Advocates for Respondent Nos.2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2024.

P.C.:

1. Heard Mr. Khandeparkar, learned Advocate for Petitioner; Ms. Raje, learned AGP for Respondent Nos.1 and 3 and Mr. Patil, learned Advocate for Respondent No.2.

2. The present Writ Petition takes exception to the order dated 23.02.2024 passed by Respondent No.3 on behalf of Respondent No.1, *inter alia*, declaring 13 out of 14 structures standing on CTS No.88 which is Government land, as unauthorized, save and except one particular structure. The map of the Suit property is at page No.62 of the Writ Petition and the structure which is in the black hatched portion is probably referred to in clause '3' of the order dated

27.04.2023 which is at page No.114 of the Writ Petition. At this time there was no threat of dispossession. The impugned order is passed by the Trial Court on 23.02.2024.

3. Mr. Khandeparkar, learned Advocate for the Writ Petitioner would submit that pursuant to the order dated 27.04.2023, 13 unauthorized structures are demolished. He would submit that there is an imminent threat of demolition of the remaining one structure felt by the Plaintiffs for the first time on 12.02.2024 and averment to that effect is made in paragraph No.26 of the Suit plaint. In that regard, the cause of action for immediately filing the Suit on 12.02.2024 has been pleaded in paragraph Nos.32, 33 and 36 of the Suit plaint. Plaintiff has therefore sought dispensation of the Application seeking leave under Section 80 of the Civil Procedure Code, 1908 (for short “CPC”) which is at page No.149 of the Writ Petition, in view of the imminent threat of demolition as also dispossession. That Application is rejected by the impugned order dated 23.02.2024. Hence Petitioners are before this Court.

4. In the given facts and circumstances of the present case, after reading the impugned order dated 23.02.2024 and perusing the *prima facie* material with respect to the structure standing on CTS No.88 namely the electricity bill of the year 1998 which is at page No.85 and the survey receipt of the year 2000 which is at page No.78 of the Writ

Petition, I am of the *prima facie* opinion that both these documents are well before the datum line of the year 2000, hence if the Plaintiff has approached the Civil Court with the imminent threat of dispossession and demolition of the structure, then in these facts the Civil Court ought to have dispensed with the issuance of notice under Section 80(4) of the CPC. It is only when the Plaintiff felt the imminent threat which would ultimately strike at the livelihood of the Petitioner that the Plaintiff rushed to the Court and in such circumstances the Application for dispensation ought to have been considered.

5. Ms. Raje, learned AGP appears for Respondent Nos.1 and 3 – State. Respondent No.4 is not represented before me. She would submit that the imminent threat of demolition and dispossession was not immediate since in the present case, electricity has already been disconnected as far back as on 06.06.2023 according to her instructions. Though she would fairly submit that subsequent thereto Plaintiff has also applied for a fresh electricity connection, but that would be a matter to be dealt with separately in accordance with law.

6. Mr. Patil, learned Advocate appearing for Respondent No.2 would submit that Respondent No.2 is in the picture in view of the fact that the Suit land being Government land is leased to the Corporation and therefore they are a proper and necessary party requiring the said land.

7. The only issue before me today is with respect to the rejection of the Application seeking leave of the Court. As held by the Supreme Court, the superior Court can always grant the same if it has been refused by the Court below in the given facts and circumstances of the case, rather than relegating the party by setting aside the order of refusal. In the present case, the circumstances are such that the leave for dispensation of the Section 80 notice deserves to be granted.

8. Considering the facts and circumstances in the present case, I am of the opinion that the leave as sought for dispensation under Section 80 of the CPC by the Plaintiff should be granted by the Court so as to enable the Plaintiff to prosecute the Suit proceedings before the learned Trial Court strictly in accordance with law.

9. Considering the averments made in the Suit plaint in paragraph Nos.26, 32, 33 and 36 as also the *prima facie* record which is placed at page Nos.78 and 85 of the Writ Petition, I am inclined to dispense with the leave under Section 80 of the CPC. Resultantly it would mean allowing the Application dated 14.02.2024 filed by the Plaintiff for seeking such leave which is at page No.149 of the Writ Petition. That Application therefore stands allowed. Leave under Section 80 of the CPC stands dispensed with.

10. It is clarified that this Court has not opined on any merits of the matter including that of the legality and validity of the structure of

the Petitioner. The observations and findings made in this order are *prima facie* in nature and the learned Trial Court shall therefore proceed with the Suit proceedings strictly in accordance with law.

11. It is clarified that learned Trial Court shall not be influenced by any observations made in this order.

12. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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