

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 873 OF 2024
WITH
INTERIM APPLICATION NO. 15371 OF 2024

M/s. Tandon Motor Garage Through Partner Mr. ...Appellant
Vinod Tandon

Versus

Maharashtra Housing And Area Development ...Respondents
Authority And Another

WITH
INTERIM APPLICATION (ST) NO. 35910 of 2024
IN
APPEAL FROM ORDER NO. 873 OF 2024

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA NITIN
CHAVAN
Date: 2024.12.12
14:21:27 +0530

Shivkrupa SRA CHS (Prop) and Ors. ...Applicants/
Intervenors

In the matter between:

M/s. Tandon Motor Garage Through Partner Mr.
Vinod Tandon

...Appellant

Versus

Maharashtra Housing And Area Development ...Respondents
Authority And Another

Mr. Anil Singh, Senior Advocate a/w Adarsh Jain i/b Mansha Bhatia for
the Appellant.

Mr. Akshay Shinde for Respondent No.1/MHADA.

Mr. Mayur Khandeparkar i/b Chirag Thakkar for the
Applicant/Intervenors in IAST/35910/2024.

CORAM : M.M. SATHAYE, J.
DATE : 11th DECEMBER 2024

P.C. :

1. Heard learned Senior Advocate for the Appellant and learned

counsel for the Respondent/MHADA.

2. This appeal challenges order dated 21.11.2024 passed by the City Civil Court, Borivali Division, at Dindoshi in Notice of Motion No. 2508 of 2024 in Suit No. 1506 of 2024. By the said impugned order, the motion is rejected, which was taken out by Appellant for restraining the Respondent/MHADA from disturbing the peaceful possession of the Appellant over the suit land/structure without following due process of law and from acting on the suit notices dated 01.03.2024 and 11.03.2024.

3. Learned Senior Advocate for the Appellant pointed out that impugned notice dated 01.03.2024 is based on the Authority given under notification dated 23.05.2018. From the said notification, it is pointed out that apparently, at least *prima facie*, the subject matter land (CTS No. 95-B) is not included under entry No. 113 in respect of Oshiwara, Jogeshwari. He further contended that the impugned order is passed *ex-facie* in ignorance of the reply filed by the Appellant to the termination notice issued by Respondent/MHADA, terminating the right of way Agreement dated 25.08.1998. From the record it is pointed out that the Appellant had replied to the said notice of termination, under reply dated 20.03.2024. He further submitted that the suit notice is issued initially alleging unauthorized commercial user of the subject land, however it calls upon the Appellant to demolish the structures. He has relied upon the certain documents to contend that 2 structures on CTS No.95-B are in existence and are protected as being in existence prior to applicable datum date.

4. Learned counsel for the Respondent/MHADA on the other

hand contended that if the said notification is read as a whole, then it is applicable to area of lands of MHADA layout under its jurisdiction in Greater Bombay area and therefore, the list annexed to the said notification cannot be treated as exhaustive and CTS 95-B is also covered.

5. I have considered the submissions and perused the record.

6. Perusal of the impugned order apparently shows that the reply filed by the Appellant to the notice of termination, is not considered. Also, it is common ground before the Court that the contention regarding authority of Respondent/MHADA to issue suit notices, which goes to the root of the matter, is also not considered by the Trial Court.

7. In that view of the matter, the said contentions will have to be considered by the Trial Court, as it is not appropriate to consider them for the first time in this Court.

8. Learned counsel for the Respondent/MHADA submits that if the protection granted during the pendency of the motion, is to be continued, it should not be used by structures which are not covered by the suit notice. He points out that during inspection of CTS No. 95-B conducted on 06.02.2024, unauthorised constructions of Bamboo, cloth/*kapda* and Tarpaulin /*tadpatri* were found on the subject matter CTS No. 95-B. The apprehension expressed by the Respondent/MHADA appears to be justified, since the documents relied upon by learned Senior Advocate for the Appellant, to contend that the structures on CTS No. 95-B are protected, *prima facie* indicate existence of only 2 structures.

9. In that view of the matter, to protect the interests of both sides, **Appeal from Order and Interim Application No. 15371 of 2024 are disposed of** by passing following order.

- (i) The impugned order dated 21.11.2024 is set aside.
- (ii) The Notice of Motion No. 2508 of 2024 is restored to file of the Trial Court for fresh consideration in accordance with law and on its own merits, including contention about authority of MHADA to issue suit notices.
- (iii) The protection granted by the Trial Court under order dated 21.11.2024 will continue to operate during the pendency of the motion, however the said protection would apply to only 2 structures in CTS No. 95-B which are shown to be existing on the basis of a map on page 113 Exh. 'F' of the appeal compilation.

10. At this stage, learned Senior Advocate for the Appellant prays for stay to termination of its right of way. On instructions from Mr. Vinod Tondon, who is a partner of the Appellant firm, present in the Court, undertakes not to close the gate and block the entry of CTS No. 95-B and also not to prohibit the Officers of the Respondent/MHADA from entering in the said property, from today itself. Such undertaking on behalf of Appellant Firm be filed within a period of one week from today in this Court.

11. Subject to such undertaking being filed, the termination of right of way under order dated 09.07.2024, is stayed during pendency of motion.

12. Mr. Khandeparkar appears for the proposed intervenors.

Admittedly, the intervenors were not party before the Trial Court. Mr. Khandeparkar on instructions submits that he will withdraw the intervention application and file appropriate proceeding in accordance with law. Interim Application (ST) No. 35910 of 2024 is **taken on board** and disposed of as withdrawn.

13. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)