

Shailaja

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

APPEAL FROM ORDER NO.858 OF 2022

a/w

CIVIL APPLICATION NO.96 OF 2022

IN

APPEAL FROM ORDER NO.858 OF 2022

Sabhajeet Sankatha Prasad Sharma	]	Appellant
vs.		
State of Maharashtra and another	]	Respondents

a/w

INTERIM APPLICATION NO.9293 OF 2024

IN

APPEAL FROM ORDER NO.858 OF 2022

State of Maharashtra and another	]	Applicants
Vs.		
Sabhajeet Sankatha Prasad Sharma	]	Respondents

IN THE MATTER BETWEEN:

Sabhajeet Sankatha Prasad Sharma	]	Appellant
vs.		
State of Maharashtra and another	]	Respondents

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Mr. Pradeep J. Thorat a/w Mr. J.S. Yadav i/b Mr. B.P. Shukla, for Appellant.

Mr. P.P. Devkar, A.G.P, for Respondents – State in Appeal from Order No.858 of 2022 and for Applicants in Interim Application No.9293 of 2024.

Mr. Rajendra Kshirsagar, Collector, Mumbai Suburb District, present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 5th July, 2024.

P.C.

1. This Appeal arises out of an order dated 16th July, 2019 passed by the learned Judge, City Civil Court, Mumbai in S.C. Suit No.1662 of 2019 by which an application moved by the appellant for seeking ad-interim temporary injunction came to be refused by the said Court.

2. The sum and substance of the *lis* is that the suit property bearing City Survey No.1172 is said to have been in possession of father of the appellant since before 1960. The appellant had placed on record several documents to substantiate his possession over the suit property bearing City Survey No.1172 before the Trial Court while challenging a notice issued by respondent No.2 under Section 50 of the Maharashtra Land Revenue Code, 1966 asking the appellant to remove encroachment from the government land.

3. After hearing the appellant, the Trial Court, *inter alia*, observed that in view of a Public Interest Litigation No.54 of 2017

pending before this Court wherein the respondent – State had been asked as regards the steps to be taken to remove the encroachment from the suit land and, therefore, the Trial Court refused ad-interim relief *qua* the suit land. Hence, the appellant approached this Court under Order-43, Rule-1 (r) of the Code of Civil Procedure, 1908.

4. I heard Mr. Thorat, learned Counsel for the appellant and Mr. Devkar, learned A.G.P, for respondent No.1 – State.

5. Mr. Thorat invites my attention to a document dated 20th April, 1978 to substantiate his contention in respect of his occupation over the suit land since 1978. He also places reliance on a document in the form of census certificate *qua* the suit land granted by the Controller of Slum on 5th February, 1980.

6. First document dated 20th April, 1978 appears to have been issued by the Ward Officer, R Ward, Municipal Corporation of Greater Mumbai whereby the appellant's father was directed that there is a *Subabhul* tree in the said premises which is in occupation of the appellant's father. The said tree had been insufficiently cut and is likely to fall causing damage to the public and, therefore, he

was required to cut the tree in view of Section 383 of the Bombay Municipal Corporation Act. This document, by no stretch of imagination, would substantiate occupation of the suit land by the appellant, much less, authorized and legal occupation over the said piece of land.

7. As regards document dated 5th February, 1980 is concerned, it appears to be a census certificate for structure No. RXC – 25 1/1. Though it indicates CTS No.1172, it would not, in any way, give occupational rights over the suit land because what has been stated in the said document is that the said structure No. RXC – 25 1/1 is censored in the name of Shankata Prasad P. Sharma.

8. A Public Interest Litigation bearing No.54 of 2017 has been filed in this Court. It would be advantageous to extract observations made by the Division Bench of this Court comprising the Hon'ble the Chief Justice and Justice Mr. Arif S. Doctor on 17th April, 2024 in Interim Application No.868 of 2024 in PIL No.54 of 2017, which read thus;

“4. On 15th March, 2019, the Court passed the following order:

“1. The learned Additional Govt. Pleader would take further instructions as it is admitted fact that there is encroachment on the subject land which is owned by the State as stated in paragraph 7 of the affidavit dated 26 September 2018 filed on 5th March 2019 by Sub Divisional Officer, Mumbai Western Suburban. The question is as to how the authorities will deal with this encroachment.

2. Stand over to 5 April, 2019”.

5. Thereafter the matter was taken up on 5th April, 2019, when the communication dated 4th April, 2019 from the Sub Divisional Officer, Mumbai Western Suburb to the Additional Government Pleader was taken on record, on the basis of which it was submitted by the learned Addl. Govt. Pleader that encroachments on the subject land will be removed by the end of June 2019. The order dated 5th April, 2019 is also extracted herein-below.

“1. The learned Addl. Government Pleader submits that the encroachment on the subject land would be removed by the end of June 2019. The communication dated 4 April 2019 addressed by Mr. Umesh Birari, Sub Divisional Officer, Mumbai Western Suburb, to the Addl. G.P., is taken on record.

2. *Stand over to 28th June 2019 for compliance.”*

6. *It appears, as stated by the learned Addl. Govt. Pleader, that certain steps were taken by the office of the Collector for removal of encroachments, however, respondent no.9 had instituted a Suit against such action, wherein the prayer for interim relief was refused by the learned trial Court. It is also stated by the learned Addl. Govt. Pleader that the learned trial court, where the Suit was filed by the respondent no.9, however, granted protection for a period of three weeks for enabling the respondent no.9 to file an appeal. The said appeal is said to have been filed by the respondent no.9 in the year 2019, where the interim order is said to be continued.*

7. *Having regard to the aforesaid facts, the Court passed an order on 27th November, 2020, directing that the matter shall stand removed from the list on the statement made by the then Addl. Govt. Pleader who appeared on behalf of the State authorities that appropriate steps will be taken to move an application in the Appeal from Order (Stamp) No.21105 of 2019 for vacating the ad-interim relief.*

9. It can, thus, be seen that the land in question is essentially a land which belongs to the State Government who has failed, despite several opportunities to get it vacated from the possession of the appellant who had encroached upon it and had also created third

party interests. Conduct of the Government is writ large from the observations made by the Division Bench of this Court. The Collector, Bombay while communicating the progress in respect of the said land to the Government Pleader on 14th June, 2024 had informed in respect of the encroachment made on the said land by the appellant, who had also created a third party interest admeasuring 686 square meter which was being used for parking. Some part of the said land had been given on rent to a Showroom of Honda Company. Certain permanent residential constructions are also made on the said land. The appellant appears to have also constructed a Godown of tin shed which is being used for storing certain plastic articles. A *panchanama* appears to have been drawn by the Collector, Mumbai in that respect.

10. Mr. Kshirsagar, Collector, who was present in the Court admits that encroachment made on the Government land has not yet been removed. Be that as it may.

11. The Trial Court has, therefore, rightly refused ad-interim relief.

12. Having taken into consideration the aforesaid facts, the Trial Court shall decide the Notice of Motion, in accordance with law, by 12th July, 2024 after hearing learned Counsel for the appellant and respondents on 8th July, 2024.

13. The parties shall appear before the Trial Court on 8th July, 2024.

14. No adjournments shall be granted to any of the parties under any pretext.

15. The Trial Court shall decide the Notice of Motion on its own merits, in accordance with law, without getting influenced with the observations made hereinabove.

16. The Appeal from Order stands disposed of in the aforesaid terms with no order as to costs.

17. In view of disposal of the Appeal from Order, pending applications, also stand disposed of.

18. Till 12th July, 2024, the parties shall maintain *status-quo qua* the suit land.

19. All concerned to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]