

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

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**INTERIM APPLICATION NO. 10438 OF 2025
WITH
INTERIM APPLICATION NO. 9371 OF 2024
IN
FIRST APPEAL NO. 151 OF 2025**

Mr. Ramdev Rangappa Kulal ...Applicant/Appellant
Versus

General Manager (BEST), Mumbai And Anr. ...Respondents

Mr. Avinash Kango for Applicant/Appellant.

Ms. Heena Shaikh i/by M. V. Kini & Co. for the Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 30th JULY, 2025

P.C. :

1. These applications are filed by the Appellant/original Plaintiff seeking interim injunction restraining the Respondents from obstructing or interfering with the Plaintiff's alleged possession and enjoyment of the suit property. A prayer for amendment is also made in averments and prayer clause. Proposed amended prayer is also same prayer, in essence, of restraining the Respondents from disturbing the alleged possession of the Applicant, from running canteen and for an order of status quo.

2. Learned advocate for the Applicant has taken the Court through the plaint, written statement and relevant portions of the oral evidence as well as certain documents produced on record and prayed for interim protection.

3. Learned advocate for the Respondent (BEST) has vehemently opposed the applications contending that the Applicant/Plaintiff has no semblance of right to seek any relief in respect of suit property, which belongs to the Respondent (BEST) and the present suit is filed after eviction order was passed against the Applicant by following due process of law.

4. I have heard learned counsel for the parties and perused the record.

5. The applicant is original Plaintiff who filed the suit for injunction simplicitor in respect of suit property which is initially described to be situated on CTS No.962. The description of the property was later on amended and CTS No.958 has been introduced. It is the case of the Applicant that he was inducted on the suit property by Airport Authority of India ('AAI', for short) and entire claim of the applicant is based on an NOC dated 28.12.1994. Admittedly, apart from this document, there is no document produced by the Applicant in support of his claim and his right to occupy the suit property. The suit is filed only for the purpose of injunction simplicitor. No declaration is sought.

6. The Trial Court has held vide Issue Nos.1 to 4 that the Applicant did not prove that the AAI allotted the suit property to the applicant, alleged obstruction is not proved, suit property is not properly described and Applicant is not entitled to injunction. It is further held that the suit property is not properly described and therefore, the Applicant has been held not entitled for perpetual

injunction.

7. It is cardinal principal of law that for grant of perpetual injunction, where prayer is that the plaintiff should not be disturbed in his peaceful possession of 'the premises', description of 'the premises' has to be free from doubt and the plaintiff must establish some right in the premises. Otherwise the Court runs a risk of granting injunction against defendant unnecessarily and about property which is not discernible or clearly located. It is trite that such injunction should not be granted.

8. Viewed in the light of this legal position, when the impugned judgment is perused, following aspects emerge :

(i) The entity from which the applicant claims to be inducted i.e. AAI is not made a party Defendant and it is conveniently kept away.

(ii) The suit property is not properly described as required under Order VII Rule 3 of Civil Procedure Code, 1908. The Plaintiff has not stated boundaries of the suit property.

(iii) The Plaintiff sought change of property number from CTS No.962 to 958, which itself indicates that the Plaintiff is not sure on which CTS, he claims injunction.

(iv) The document of NOC from AAI dated 28.12.1994, which is the sole basis of claim, is not produced in original. Its copy is produced and its contents are reproduced by the Trial Court in the judgment. It indicates that is it an NOC to operate canteen without

describing the location or property on which canteen was permitted to be conducted. The Trial Judge considered this aspect in para 22 of the judgment.

(v) No officer of the AAI is examined in support of the case of the Applicant. There is no document apart from the said copy of NOC to form basis of the claim made by the Applicant.

(vi) Respondent BEST has examined its executing engineer establishing that CTS No.958 (part) admeasuring 4773 sq. mtrs. is handed over to the Respondent by Municipal Corporation in 1991. Respondent statutory body is found to be owner of larger property CTS No. 958. The report submitted by officer of the Defendant after removing the structure of the applicant on 06.04.2011 is produced on record at Exh.66. Further effort of the Applicant to start the his activity has resulted into removal of the tea stall, about which report is placed on record at Exh.67. The Applicant's structure has been seized and demolished 4-5 times. No prayer of restoration has been made.

(vii) Trial Court has concluded on the basis of documents produced that the Applicant was evicted and dispossessed from suit premises prior to institution of suit, under departmental process of law.

(viii) In view of above, the suit has been dismissed.

9. From the documents shown to this Court, it is not seen that the Applicant had any better case. No document of allotment in favour of the Applicant or any other document showing even a semblance of

right as provided under law, is shown to this Court.

10. In that view of the matter, there is no merit in the applications seeking interim injunction. The applications are accordingly dismissed.

(M.M. SATHAYE, J.)