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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 109 OF 2025
WITH
INTERIM APPLICATION NO. 3585 OF 2025
WITH
INTERIM APPLICATION NO. 1865 OF 2025
IN
APPEAL FROM ORDER NO. 109 OF 2025**

Suman Kirit Kantharia and Ors ... Appellants/Applicants

vs.

Mumbai Housing and Area Development ... Respondents
Mumbai through its Ex. Engineer Borivali
Office and Anr

Mr. Rakeshkumar Tiwari for Appellants

Ms. Manisha Jagtap for Respondent - MHADA.

CORAM : GAURI GODSE, J.

DATED : 1st APRIL 2025

ORDER:

1. In compliance of the order dated 12th March 2025, application filed by the appellants is decided by MHADA. The copy of order is placed on record. Learned counsel for MHADA submits that the appellants are not found eligible under any of the schemes of MHADA. She submits that the documents produced on record by

the appellants were considered. However, there are no supporting documents to declare that the appellants are protected under any of the schemes.

2. Learned counsel for MHADA submits that in the absence of supporting documents, the appellants cannot be held entitled to retain the suit structure and occupy the land of MHADA. She submits that MHADA has already floated the redevelopment process.

3. In paragraph no. 4 of the order dated 12th March 2025, the appellants' statement was recorded that if the appellants are not found eligible by MHADA for alternate accommodation, the appellants would vacate the suit structure without prejudice to the rights and contentions of the appellants to apply for alternate accommodation under any of the schemes of the government.

4. Learned counsel for the appellants however, submits that the appellants would want to challenge the order dated 25th March 2025, passed by MHADA, pursuant to this court's order dated 12th March 2025.

5. The appeal arises out of dismissal of the appellants' notice of motion for protection from implementation of notice challenged in the suit. The notice challenged in the suit is issued under Section 55

of the Maharashtra Regional and Town Planning Act, 1966 ('**MRTP Act**') alleging that the appellants had illegally encroached on MHADA's land by constructing temporary structure without seeking any permission. The notice of motion is dismissed by holding that the appellants' were unable to plead and prove the nature of the construction or any permission for carrying out construction on MHADA land. There is no dispute that the structure is standing on the land owned by MHADA. In the absence of any document to support the plaintiff's contention that the suit structure is standing on MHADA land since 1962, I do not see any ground to find fault in the reasons recorded in the impugned order.

6. For want of any supporting document, the learned Judge of the City Civil Court has refused to grant the discretionary relief of injunction against MHADA in implementing notice under Section 55 of the MRTP Act. The plaint is bereft of any pleadings about the particulars regarding the existence of the suit structure since 1962 as argued by the learned counsel for the appellant. None of the documents relied upon by the appellants supports their contention that the suit structure is in existence since 1962 or it is constructed after any permission.

7. The appeal is devoid of any merit. The appeal is therefore

dismissed. In view of dismissal of the appeal, the pending applications are disposed of as infructuous.

8. At this stage, learned counsel for the appellants seeks extension of protection to approach the Hon'ble Apex Court. He submits that during the pendency of notice of motion, the appellants' structure be protected. In view of the statement made on behalf of the appellants, as recorded in paragraph no. 4 of the order dated 12th March 2025, I do not see any reason to extend the protection that was operating during the pendency of notice of motion. Hence, the prayer is rejected.

(GAURI GODSE, J.)