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

**INTERIM APPLICATION NO. 3792 OF 2025
IN
FIRST APPEAL NO. 1741 OF 2024**

Sewri Nilgiri Udyog Bhavan Co-op. Society Limited ...Applicant
Versus
M/s. M. B. Development Corporation, Mumbai & Ors. ...Respondents

Mr. Prathamesh Bhargude a/w Mr. Akash Shah, Ms. Dhanvanti Kharva and
Ms. Neha Bhavsar for the Applicant.
Mr. Nirman Sharma i/b Ms. Kavita Shah for Respondent No.1.
Mr. Pradeep Patil a/w Mr. Santosh Mali i/b Ms. Komal Punjabi for
Respondent No.5 / MCGM.

CORAM : M. M. SATHAYE, J.

DATED : 24th DECEMBER 2025

PC:

1. Head learned Counsel for the parties and perused the records.
2. This is an Application by Appellant seeking permission to carry out repairs and maintenance of subject matter land bearing C.S. No. 841 admeasuring 1388 sq. yards, connecting the Tokersey Jivraj Road with the Applicant's premises, for bringing it in usable condition.

3. The case of the Applicant in short is as under.

3.1) That it is a co-operative society duly registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and consists of various industrial Galas involved in the manufacturing of various products. The Appeal is filed to the limited extent of

challenging the order of Trial Court by which it is held that the said land is not owned by Respondent No. 4-State. That the said land constitutes a public passage/road since prior to 1933 and is the only entry / exit to and from the premises/galas of Applicant's members. That the subject matter suit (L.C. Suit No. 4416 of 1992) was filed by the Applicant's members seeking declaration that the said land is owned by the State Government and the Applicant and its members have been using the same since beginning without any hindrance.

3.2) That the Trial Court has accepted and decreed the easementary right of the Applicant and members of the public over said land and has restrained Respondent Nos. 1 and 2 from obstructing the ingress and egress of the Applicant or any members of public in respect of said land. That the present appeal before the Court is primarily for adjudicating title of said land between Respondent Nos. 1 and 2 on one hand, and Respondent No.4-State on the other. That the right of Applicant recognized by the Trial Court is easement of necessity and Applicant and its members are the dominant owners.

3.3) That since the Applicant and its members are declared as dominant owners, the Applicant in earnestness met the officers of Respondent No. 4-State and requested them to carry out repairs of said land to bring it in usable condition, so that members of Applicant, their vehicles and members of public in general can enjoy the fruits of the decree. However, there was no response from State.

3.4) That the condition of the said land which is an ingress/egress road for a very long time, has only deteriorated. That Applicant and its members running commercial units requires continuous movement

of heavy vehicles, but condition of the said land/access road has worsened, so much so, that vendors and transport agencies are rejecting and avoiding to come and pass through the said land to reach the units of Applicant members. That this has resulted in loss to Applicant's members. That the already deplorable condition of the said land / access road is further aggravated during monsoon.

3.5) That since the Applicant's easementary rights are established pursuant to impugned judgment and decree, it is necessary to permit the Applicant to carry out repairs and maintenance of the said land/access road to bring it to proper condition, so that the vehicles approaching the Applicant's premises and public at large can exercise ingress/egress right. Applicant has stated in Paragraph 17 of the application that it is ready to repair the said land/ access road at its own expense and without claiming any equity. Photographs are placed on record showing condition of the said land as on April and May 2025.

4. Respondent No. 1 filed affidavit-in-reply dated 16/04/2025, contending *inter alia* as under.

4.1) That Respondent No. 1 is an owner of the said land under registered deed of conveyance dated 22/02/1991 and only a limited right of passing through the said land has been given to Applicant. That this application is an attempt by Applicant to interfere with possession and property rights of Respondent No. 1, in order to create rights and equities.

4.2) That the Applicant has no *locus standi* and the Application is

taken out to bypass the provisions of law. That the said land is a private property owned by Respondent No. 1. That the said land has always been a *kaccha* passage and as such this application is an attempt to change its nature to permanent road, which falls foul with provisions of Indian Easement Act, 1882 ('the said Act' for short) That the application lacks material particulars and is an intentional effort to steal march over Respondent No. 1.

4.3) That Respondent No. 1 has itself carried out maintenance work on 12th, 13th and 14th of April 2025 spending from its own pocket, in order to resolve purported difficulties faced by Applicant. Photographs are placed on record in support of this contention of repairs.

5. The Applicant has filed affidavit-in-rejoinder dated 05/06/2025 reiterating its case and contradicting the version of the Respondent No. 1. Photographs are placed on record disputing the so called repair carried out in the said land and pointing out that the said land is in muddy condition with potholes.

6. The Respondent No. 1 filed affidavit of sur-rejoinder dated 19/06/2025 disputing the case of the Applicant that the said land is the only stretch as means of access available to the Applicant. A statement is made, without prejudice to rights and contentions, that the Respondent No. 1 is ready to offer access from the adjoining property bearing C.S. No. 181 belonging to the associate-company of the Respondent No. 1 from the proposed road declared as 13.2 wide DP road by the Municipal Corporation. It is contended that the Applicant is bent upon to use the said land, which is a private property, with an ulterior motive. Again a statement is made that Respondent No. 1 has got the said land repaired bringing it to usable

condition, after heavy rain in June 2025, at its own cost of Rs.11.00 lakh. Again certain photographs are placed on record in support of the contentions.

7. The Trial Court, after hearing both sides and on appreciation of evidence, has held under the impugned Judgment and Decree that it is not proved that the said land is owned by the State.

8. It is seen from the records that in April 2025, time was given to the Respondent No. 1 to ensure that entire stretch of the said land/access road is brought in the same condition. Compliance affidavit was filed. The Respondent No. 1 took a stand in May, 2025 that the road has been repaired and made usable by spending Rs.7.00 lakh. This claim of repairs was disputed. In June 2025, the Respondent No. 5-Municipal Corporation took a stand that before making and repairing the road, its permission is required. Finding that there was dispute about the condition of the said land/access road, concerned Ward Officer of the Municipal Corporation was directed to visit the said land and check the condition and also check if proper ingress and egress is available.

9. In September 2025, the report has been filed by the Respondent-Municipal Corporation.

10. In October 2025, time was sought by Respondent No. 1 to file reply to the report and the matter was adjourned to verify whether Respondent No. 1 is ready to carry out repairs so as to make the disputed property/road in usable condition.

11. Perusal of the report filed by the Respondent-Municipal Corporation shows that the Assistant Commissioner (F/South ward) visited the said land

on 02/07/2025 and according to his observations, the suit road is not municipal road, there is no foundation of road and there is no proper surface layer. Potholes and bad patches are observed at many places. Muddy water was seen accumulated at many places. Storm water drainage line was not found. The sewer line was found in damaged condition at many places and overall condition of the road was not proper for ingress and egress. From the photographs annexed to the report, the condition of the road appears to be bad.

12. Mr. Bhargude, learned Counsel for the Applicant submitted on instructions that the repairs carried out by the Respondent No. 1 are not sufficient to keep the suit road in proper condition for the purpose of ingress and egress. He submitted that during pendency of the Appeal, the Respondent No. 1 cannot be permitted to bring about a situation by which the injunction granted by the Trial Court under impugned decree becomes a mere paper-order and the ingress and egress remains obstructed by condition of the road. He states on instructions, that the Applicant is ready to carry out repairs and maintenance of subject road at its own cost, without prejudice to rights and contentions of parties and without claiming any equity. Statement accepted. He submitted that if permission is given, the Applicant will make a tar-road.

13. Mr. Sharma, learned Counsel for the Respondent No. 1 opposed the request on the ground that in the past the said land has been maintained by Respondent No. 1 at its own cost; however, due to the intervening monsoon, the condition of the road could not be maintained and it has resulted in both the sides moving the Court multiple times. He has shown photographs of different stages on the time-scale during year. He submitted that under law,

the Applicant and its members can be at best be considered as having easementary right with the Respondent No. 1 being a servient owner. He submitted that u/s 27 of the said act, the servient owner is not bound to do anything or take any action for the benefit of dominant heritage. He submitted that under the applicable Rules of the Municipal Corporation, detailed procedure is provided for preparation of both, public road as well as private road, and therefore the Applicant cannot be permitted to bypass the procedure under law and claim right on the said land owned by Respondent No. 1. He submitted that the Applicant under the guise of Court's order, cannot be permitted to change nature of said land.

14. Mr. Bhargude, submitted that the Applicant does not wish to come back to the Court again and again, showing the condition of the road which is not properly maintained and therefore appropriate directions may be issued permitting the Applicant to carry out repairs in a time bound manner.

15. Learned counsel Mr. Sharma for the Respondent No.1, on instructions, has expressed an apprehension that the private property of Respondent No.1 is adjacent to the said land and the proposed repair work should not in any way prejudicially affect the private property of Respondent No.1.

16. I have considered the submissions and perused the records.

17. From various orders passed earlier and various photographs placed on record showing condition of said land on time-scale, the overall picture emerging is that the maintenance of the said land is an issue between parties and the Respondent No. 1 is not willing to permit the Applicant to carry out any repair on its own, considering that under impugned judgment, the only right recognized of the Applicant and its members, is of ingress and egress.

It appears that the dispute of maintenance of said land will perpetuate, if the condition of said land (over which Applicant and its members have been held to have right of ingress/egress) keeps getting bad periodically. It is clear from various photographs that during pendency of the application, whatever repairs the Respondent No. 1 has undertaken in the past, has been of temporary nature and insufficient and said land / access road has been getting in bad shape. Therefore making a tar-road seems to be one of the possible solutions.

18. Under the impugned judgment, the Trial Court has found that the said land is not owned by government and Respondent Nos. 1 is claiming ownership of the said land under the conveyance deed dated 22/02/1991. Mr. Sharma, learned Counsel for the Respondent No. 1 has also relied upon an extract of survey register pointing out that as on today, the name of Respondent No. 1-partnership firm and constituted attorney of Respondent No. 2 appears in the column of person having beneficial ownership. As such the Court can not lose sight of the fact that as on today, the Respondent No. 1 is owner of the said land.

19. The Appeal is admitted in September 2024. Final hearing is likely to take long time.

20. In the meantime, it is necessary that the ingress and egress of the Applicant and its members, which right is recognized, must be maintained. The condition of the said land/access road cannot be permitted to deteriorate to such an extent, that the right of ingress and egress is seriously affected. Condition of the said land/access road can not be permitted to become such as to frustrate the perpetual injunction granted in favour of Applicant's members and against the Respondent No. 1 & 2.

21. Since the Respondent Nos. 1 is owner of the said land /access road, the contention of Mr. Sharma that Applicant cannot be permitted to construct a full-fledged road on its own, is justified. However, at the same time, repeated situation of poorly maintained road cannot be permitted to perpetuate in view of the past failed exercises.

22. Section 27 relied upon by the Respondent No. 1 will have to be balanced with provisions of section 24 of the said Act, which though the Applicant has not replied upon, but this Court is bound to consider. Section 24 of the said Act provides that the dominant owner (Applicant in present case) is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible, and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage and it is called 'accessory right'.

23. Therefore, an effort to achieve balance will have to be made during pendency of the appeal. In the aforesaid facts and circumstances, in my considered view, the only workable solution, that can be found as an interim arrangement between the parties, is to direct the Respondent No. 1 to construct a tar-road on the said land, in a time-bound/scheduled manner, however, at the cost of the Applicant.

24. Therefore, the Application is disposed of by passing the following order:

- (a) The Respondent No. 1, within a period of 4 weeks from today, shall share with Applicant, a report / proposal for construction of a tar-road on C.S. No. 841 admeasuring 1388 sq.

yards, with proposed location and expenses.

(b) On receipt of the such report / proposal, the Applicant shall submit its response and proposed schedule of release of amount within a period of 4 weeks thereafter.

(c) On the amounts being released by the Applicant in a scheduled manner, the Respondent No. 1 shall construct a tar road within a period of 4 weeks thereafter.

(d) The Respondent No. 5 – Municipal Corporation shall co-operate in the process, in accordance with law.

(e) This exercise of construction of tar-road shall be without prejudice to rights and contentions of both the sides.

(f) That cost incurred by the Applicant for construction of the said tar-road, shall neither create any equity in its favour and nor the Applicant shall claim any such equity.

25. At this stage, learned counsel for the Respondent No. 1 seeks stay of six weeks on the operation of the present order. Learned Counsel for the Applicant opposed the request.

26. Considering that the interim arrangement is being decided by the order of the Court, in fairness, the operation of this order is stayed for a period of 4 weeks from today.

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

(M. M. SATHAYE J.)