

CNR No. MHSCA2-000652-2019

IN THE COURT OF SMALL CAUSES AT MUMBAI

**Order Below Exhibit 10
in
R.A.D. Suit No. 329 of 2019**

Shaikh Abdulla Ibrahim Shaikh

..... Plaintiff

V/s

1. Zakaria Masjid Trust & Ors.

..... Defendants

Mr. S.R. Patel

Advocate for the plaintiff

Mr. A. N. Nasikwala

Advocate for defendant Nos. 1 and 2.

Mr. P. J. Ramchandani

Advocate for defendant No. 6

**Coram : Mr. P. D. Zambre,
Judge, C. R. No. 22
Date : 04/04/2019**

ORDER :

The plaintiff has filed this application for injunction to restrain the defendants or any person on behalf of them from taking forcible possession of the suit premises, without entering into permanent alternate accommodation agreement and without providing transit accommodation or without paying compensation and disturbing possession of the plaintiff from the suit premises or creating third party right in the suit premises by any manner vide Order XXXIX Rule 1 of the Code of Civil Procedure (for short 'the Code').

2. In short, it is the application of the plaintiff that he is occupant

and tenant of Room No. 3, 84-88, Bazarwala Building, Bhavnagari Mohalla, Jakaria Masjid Road, Mumbai 400 009. He is paying rent of the suit premises to the landlord but the defendants do not recognize him as tenant. There was redevelopment project in respect of the suit premises but the plaintiff was not certified as occupant of the suit premises. Defendant Nos. 1 to 5 are the owners and landlords of the suit premises. Defendant No. 6 is the developer of the suit building. They are threatening the plaintiff that they will take forcible possession of the suit premises without following due process of law. It is his contention that he has prima-facie case, balance of convenience lies in his favour and he will suffer irreparable loss, if injunction is not granted. It is his further contention that he apprehends forcible dispossession. Therefore, he has filed suit for declaration in which he has very good case, but time will require deciding the suit on merits. Hence, by this application, he prayed for temporary injunction till disposal of the suit and prayed to allow the application.

3. Say of the defendants is called. Defendant Nos. 1 and 2 have also adopted their written statement Exh. 16 as their reply vide Pursis Exh.20. As per written statement of defendant Nos. 1 and 2, it is their contention that this Court has no jurisdiction to entertain and try the suit as MHADA Authority supervising the redevelopment, under Regulation No. 33(7) of the Development Control Regulations, 1991 (for short 'DCR'). Therefore, this court has no jurisdiction to entertain and try the suit under section 33 of the Maharashtra Rent Control Act, 1999 (for short 'the Rent Act'). It is further contended that with due process of law, the plaintiff is directed to vacate the suit premises by issuing notice u/s 95 (A) of the

Maharashtra Housing and Area Development Act(for short 'the MHAD Act'). Therefore, there is no question of forcible dispossession. The plaintiff will be dispossessed by the instance of Competent Authority. It is further contended that most of the tenants have vacated the premises for redevelopment, except the plaintiff. Therefore, redevelopment cannot be stalled in view of the objection of the plaintiff. Other contents are denied and prayed to reject the application. Defendant Nos. 3 to 5 deemed to be served as they refused to take summons but failed to file reply. Hence, the application is decided without reply of defendant Nos.3 to 5.

4. Defendant No. 6 filed reply at Exh. 19 and adopted written statement as its reply. Further more, it is its contention that the plaintiff has no prima-facie case. Balance of convenience does not lie in favour of the plaintiff. Defendant No. 6 is developing the property bearing No. 1397, 1398, 1399 and 1400, under regulation 33(7) of the DCR. Defendant No. 6 objected the application by filing written statement, contending that the plaintiff has suppressed material fact about suit filed before the Honourable the City Civil Court. Moreover, made same prayer for injunction before the said Court. The suit premises is authorized construction. The plaintiff is lawful occupant of the authorized premises and MHADA authority has certified the plaintiff as lawful occupant. The defendants have agreed to provide permanent alternate accommodation in lieu of the suit premises. Hence, the suit is filed without cause of action. The plaintiff has suppressed the material facts of notice of MHADA Authority. It is further contended that by giving substantial hearing, the claim of the plaintiff is rejected which is not challenged before the Appellate Authority. Therefore, the plaintiff is not entitled for the remedy

as claimed. Hence, he is not entitled for any relief. It is further contended that it is authorized construction and he is certified as lawful occupant, and the defendant is ready to execute permanent alternate accommodation but the plaintiff is claiming right in respect of unauthorized construction. There is no question of taking consent of the plaintiff for allotting permanent alternate accommodation to the plaintiff in lieu of unauthorized premises. Therefore, the plaintiff is not entitled for any relief and prayed to reject the application.

5. After filing of reply by the defendants, the plaintiff filed rejoinder vide Exh. 21 and supported contentions of the application and denied contentions in the reply. It is contended that the suit is filed under section 7(15)(d) and 16(1)(h) and (i) of the Maharashtra Rent Control Act, 1999. It is contended that there is provision of Section 51 and 76 to provide alternate accommodation to the occupant of the MHAD Act. Hence, he is entitled for relief of injunction and prayed to allow the application.

6. The points for determination alongwith my findings thereon along-with reasons are as under :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff has prima-facie case ?	No.
2)	Whether balance of convenience lies in favour of the plaintiff ?	No.

3) Whether the plaintiff will suffer an irreparable loss in absence of injunction ?

No.

4) What order ?

The application is rejected.

:: R E A S O N S ::

AS TO POINT NOS. 1 TO 3 :

7. Point Nos. 1 to 3 are inter-related and inter-connected with each other. Moreover, discussion of all the 3 points are on the same footing. Therefore, to avoid repetition, I am discussing all 3 points simultaneously. Moreover, to precise the discussion, I opt to mention the facts which are not in dispute. Hence, I opt to mention the facts which are not in dispute. The plaintiff is in possession of the suit premises and he is paying rent to defendant Nos. 1 and 2. Defendant No. 6 is developer. Defendant Nos. 1 to 5 are landlords of the suit premises, are the facts which are not in dispute. But, it is contention of the plaintiff that he is lawful tenant of the suit premises. But, the defendants have not recognized him as tenant. Therefore, the suit is filed. He has prima-facie case, balance of convenience in his favour and irreparable loss will be caused to him in absence of injunction order, which is denied by the defendants.

8. To show prima-facie case, the plaintiff has contended on affidavit that he is lawful occupant and tenant of the suit premises. He has filed sketch on record in which the said premises appears to be mentioned as authorized construction. He has filed receipts of payment on record. It appears that those are rent receipts. It is admitted by the defendants and defendants have shown their readiness and willingness to supply

permanent alternate accommodation in lieu of this premises. Hence, I found no substance in the contention of the plaintiff that the defendants do not recognize the plaintiff as lawful occupant of the suit premises and not ready to execute agreement of permanent alternate accommodation in lieu of the suit premises.

9. The plaintiff has prayed for injunction restraining the defendants from forcibly dispossessing from the suit premises, disturbing the possession of the plaintiff in the suit premises or creating third party right in the suit premises. At the same time, the plaintiff came with the case that MHADA Authority has issued notice u/s 95 (A) of the MHADA Act for summarily eviction of the occupants. If notice u/s 95 (A) is issued, it means that MHADA Authority is getting the premises vacated with due process of law. In the circumstances, it cannot be said that the defendants are being dispossess without following due process of law. Hence, it can not be said that there is legal right of the plaintiff and it is going to be infringed. Moreover, it is contention of defendant No. 6 that for two premises i.e. in respect of the suit premises and one more premises, the plaintiff is certified as lawful occupant and he is entitled for permanent alternate accommodation in lieu of those two premises. In the circumstances, for the suit premises, it appears that plaintiff is recognized as lawful tenant by the defendants as well as recognized as lawful occupant by the Competent Authority. In the circumstances, there is no base for the contention of the plaintiff that right of the plaintiff is going to be infringed. Hence, the plaintiff has no prima-facie case.

10. Moreover, if the process of reconstruction is commenced

under the supervision of MHADA Authority, this court loses the jurisdiction to entertain and try the suit under section 33 of the Rent Act. It is right and power of the Competent Authority to certify the lawful occupant of the premises and allot the premises in redevelopment project. It is contention of defendant No. 6 that the suit premises is authorized construction and the Competent Authority has certified the plaintiff as lawful occupant. It is also contended by the defendant that, the plaintiff is entitled for permanent alternate accommodation in lieu of suit premises. It is contention of defendant No. 1 and 2 as well as defendant No. 6 that they are not getting the suit premises vacated from the plaintiff, but it is a Competent Authority who has initiated the said proceeding u/s 95 (A) of the MHAD Act. It is also submitted that they are not directing the plaintiff to vacate the suit premises. Considering the said submissions, it appears that the claim against defendant No. 1 to 6 is without any legal foundation.

11. It is contention of defendant No. 6 that by giving full opportunity of hearing, occupants of suit building are certified by Competent Authority. The order of the Competent Authority is filed by defendant No. 6 on record. It appears that by giving hearing on 2 dates, order is passed and list of occupants is certified. In the circumstances, if the plaintiff is intending to challenge the said order, then he has opportunity to prefer an appeal before Vice President of MHADA or to the State Government. But, instead of preferring an appeal before Vice President, this suit is filed. It is admitted by the defendants that they are ready to execute agreement of permanent alternate accommodation and to give all the benefits to the plaintiff. Moreover, there is no evidence against

defendant Nos. 1 to 6 supporting the contention of the plaintiff that defendant Nos. 1 to 6 are threatening the plaintiff to vacate the suit premises. On the contrary, Competent Authority has issued notice u/s 95(A) to get the premises vacated summarily. It shows that they have commenced due process of law to get the premises vacated. Against the order of Competent Authority, provision of appeal before Vice President is there. But there is no record, whether appeal is preferred against order of Competent Authority or not. But, apprehension of the plaintiff does not appear to be based on legal foundation. Hence, it cannot be said that the plaintiff has prima-facie case.

12. For entitlement of the injunction, the plaintiff has to show that balance of convenience lies in his favour and he will suffer irreparable loss in absence of injunction. But, in the present matter, the plaintiff has failed to establish prima-facie case in his favour. Moreover, the suit premises is admitted to be legal premises. The defendants are ready to hand over permanent alternate accommodation in lieu of the suit premises. In the circumstances, though it is got vacated by following due process of law as per section 95 (A), of the MHAD Act, no loss or prejudice will be caused to the plaintiff as he will get permanent alternate accommodation in lieu of suit premises. The plaintiff will get either alternate accommodation in transit camp or compensation in lieu of the suit premises. In the circumstances, there is no question of causing irreparable loss. Moreover, the balance of convenience does not lie in favour of the plaintiff. In the circumstances, at this stage, it will not be necessary to stall the project of the redevelopment by granting injunction because as per contention of the

defendants, except plaintiff, all the occupants have vacated the premises, which is not denied by the plaintiff. It is settled position of law laid down by the Honourable High Court of Bombay as well as Apex Court of India that if more than 70% occupants have vacated the premises for the purpose of redevelopment, then it is not necessary to take consent of each and every occupant. But, by this application, the plaintiff wants injunction which is against public policy. In the circumstances, balance of convenience does not appear to be in favour of the plaintiff. Right will be accrued in favour of the plaintiff for the suit premises which is legally constructed and the plaintiff is lawfully inducted as tenant. It is fairly conceded by defendant No. 6. Therefore, there is no necessity to issue injunction as prayed by the plaintiff. Hence, it appears that no loss will be caused to the plaintiff though injunction is not granted. Hence, I answer point No. 1 to 3 in the negative.

AS TO POINT NO. 4 :-

13. The plaintiff failed to establish prima-facie case, balance of convenience in his favour and irreparable loss in absence of injunction order. In the circumstances, the plaintiff is not entitled for interim injunction. The application being decided on the basis of affidavit of notice as well as affidavit of reply, without opportunity of examination of witness. In the circumstances, at this stage, it will not be proper to impose costs upon any party. Hence, it will be legal and proper to direct the costs of the application to follow the event. Hence, I answer point Nos. 1 to 3 accordingly and in answer to point No. 4 I pass the following order.

:: O R D E R ::

- 1) The application for injunction filed by the plaintiff is rejected.
- 2) Costs of the application will follow the events.

Mumbai
Date : 04.04.2019

(P. D. Zambre)
Judge, Court Room No.22

Dictated on : 04/04/2019
Transcribed on : 05 /04/2019
Checked & signed on : 10/04/2019