

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION (L) NO.5199 OF 2023

IN

SUIT (L) NO.5197 OF 2023

**Jaywant Industrial Premises Co-Op. Society Ltd. ...Applicant/
Plaintiff**

Versus

Omkar Co-operative Housing Society & Ors., ...Defendants

Mr. Karl Tamboly a/w Ms. Bindi Dave a/w Mr. Kashish Mainkar a/w
Ms. Jyoti Pardeshi and Mr. Rohan Bhatia i/b Wadia Ghandy & Co.,
Advocates for Applicant/Plaintiff.

Mr. Priyank Kapadia a/w Mr. Aniketh Poojari i/b Legal Links,
Advocate for Respondent No.1.

CORAM : R.I. CHAGLA J.

DATE : 22ND FEBRUARY, 2023.

ORDER :

1. The matter has been placed today on the Production Board at 2.30 p.m. in view of the urgency shown by the Applicant/Plaintiff that the compound wall of the Applicant/Plaintiff is being broken down by the Defendants and which compound wall has been in existence since several years and in any way in existence since 2019.

2. Mr. Karl Tamboly, learned Counsel appearing for Applicant/Plaintiff has referred to photographs taken on 18th and 19th

February, 2023 which are annexed at Exhibit-R to the Plaint, one of the photographs show the gathering of people stated by Mr. Tamboly to be from the Defendant Nos. 1 to 3 – Societies around the compound wall of the Applicant/Plaintiff. There are photographs showing the bricks of the compound having been taken apart. Mr. Tamboly has compared these photographs with an earlier photograph taken in 2019 which show the compound wall at the boundary of the Applicant/Plaintiff's building plot being intact. The anxiety on the part of the Applicant/Plaintiff is that, if the Defendants are not enjoined from breaking the compound wall, the interest of the Applicant/Plaintiff will be severely prejudiced.

3. The learned Counsel appearing for Defendant No.1-Society has denied that any member from the Defendant No.1-Society is breaking the compound wall of the Applicant/Plaintiff. He has submitted that the papers in the above Suit have just been served on the Defendant No.1-Society and necessary instructions will require to be taken as the learned Counsel for the Defendant is not aware of which compound wall has been referred to by the Applicant/Plaintiff.

4. Having considered the submissions, it would be necessary to note that the compound wall which is the subject matter of the Suit

was referred to in the letter issued by MCGM, wherein complaint received from the Defendant No.2-Society alleging illegal construction of wall between Jaywant Industrial Premises Co-Operative Society Limited and the adjoining Society has been mentioned. The letter of MCGM dated 13th March, 2019 was addressed to the Chairman/Secretary of the Applicant/Plaintiff-Society. The said letter is annexed at Exhibit-J to the Plaint. Thus, the said letter goes to show that there was a compound wall constructed by the Applicant/Plaintiff-Society at least from the year 2019. Further, the first of the photographs at Exhibit-R annexed to the Plaint shows a gathering of people which the Applicant/Plaintiff states are the members of the Defendant Nos.1, 2 and 3 – Societies. The other photographs show that the bricks of the compound wall have been taken apart. These photographs are taken on 18th and 19th February, 2023.

5. In view thereof, in order to ascertain the current status of the compound wall which is the subject matter of the above suit, the Prothonotary and Senior Master of this Court shall nominate an officer to visit the site of the subject compound wall mentioned in the Plaint filed in the above suit and which is stated to be constructed by

the Applicant/Plaintiff-Society on the boundary of the society building.

6. The officer nominated by the Prothonotary and Senior Master of this Court shall visit the site of the subject compound wall on 25th February, 2023 at 11.00 a.m. The representative of the Applicant/Plaintiff shall remain present during the site visit. A Report shall be submitted to this Court regarding the inspection of the compound wall taken at site.

7. Place the Interim Application on 28th February, 2023, High on Board.

8. Till the next date, status-quo shall be maintained by the Defendants with respect to the compound wall which is the subject matter of the above suit.

9. Liberty to the parties to apply.

[R.I. CHAGLA J.]