

Sharayu Khot.

**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-operative
Society Ltd.**

**...Applicant/
Plaintiff**

Versus

Omkar Co-operative Housing Society & Ors.

...Defendants

Mr. Virag Tulzapurkar, Senior Counsel, Mr. Karl Tamboly, Mr. Kashish Mainkar, Ms. Jyoti Pardeshi i/by Wadia Ghandy & Co. for the Applicant/Plaintiff.

Mrs. Uma Kshirsagar Wagle for the Defendant Nos. 1 to 3.

(No R & P.)

CORAM : R.I. CHAGLA J

DATE : 28 February 2023

ORDER :

1. The matter has been placed today in view of the directions issued by order dated 22nd February 2023 and the subsequent order dated 24th February 2023 by which the Commissioner was appointed to visit the site of the subject

compound wall on 25th February 2023 at 11.00 a.m. to ascertain the current status of the compound wall. The Commissioner/Agent of this Court has filed Report dated 27th February 2023. Copy of the Commissioner-cum-Agent Report shall be made available to the parties in the above Suit.

2. Ms. Uma Wagle, learned Counsel appearing for the Defendant Nos. 1 to 3 has sought time to file Affidavit in Reply to the Interim Application. She has raised a dispute with regard to there being an entry gate in existence along side the compound wall and which the members of the Defendant Nos. 1 to 3 Societies were accessing to enter the garden area which is a Recreational Ground in the Applicant/Plaintiff's plot.

3. Mr. Tulzapurkar, learned Senior Counsel has vehemently opposed this contention on behalf of the Defendant Nos. 1 to 3. He submits that at least from the year 2019 there was a compound wall and which is the subject matter of the complaint referred to in the letter of the Municipal Corporation of Greater Mumbai dated 13th March 2019 addressed to the Applicant/Plaintiff. He has further referred to the letter dated 17th January 2023 addressed by the

Jaywant Co-Op Housing Society (Proposed) to the Deputy Chief Engineer (Building Proposals) City, wherein it is mentioned that there is no possibility of a 30 foot road in the residential portion except 8 foot road of Jaywant Towers and Jaywant Industrial Society for the feasibility of 3.00 FSI for the back side 3 societies if the 30 foot road as proposed at the end of the property C.S. NO. 1/404 is not allowed. It is further mentioned that opening of 20 foot road at Raheja Excelsior Society "C" Wing is not possible to be widened to make it to a 30 foot road because of existing shops on both sides and podium slab of Raheja Excelsior Society. It is further mentioned in the said letter that actual passage of the Road for ingress and outgress by the 3 societies shall be from the present 22 foot wide passage already under the usage by them. Only if this is not allowed to be used by the MCGM, then the use of the 8 foot road as right of way through the property of Jaywant Tower Society and Jaywant Industrial Society should be allowed to be used for the feasibility of 3.00 FSI by the back side of the 3 Societies.

4. Mr. Tulzapurkar has submitted that merely because of a dispute between the Defendant Nos. 1 to 3 - Societies with the Raheja Excelsior Society, they are using the 8 foot road from Jaywant

Towers and Jaywant Industrial Society.

5. Considering that there is a dispute with regard to the compound wall and whether there was an entry gate along side in existence from where the members of the Defendant Nos. 1 to 3 Societies had access. Further, whether the garden in the Plot of the Applicant/Plaintiff is reserved as Recreational ground in the Municipal record and sanctioned plans. Accordingly, it would be appropriate that the Defendant Nos. 1 to 3 file their Affidavit in Reply to the Interim Application putting this on record. Defendant Nos. 1 to 3 shall file Affidavit in Reply within a period of three weeks from the date of this order.

6. Applicant/Plaintiff is at liberty to file Affidavit in Rejoinder thereto within a period of one week thereafter.

7. The Commissioner's Report dated 27th February 2023 as aforementioned shall be made available to the parties forthwith. Costs of obtaining the copies of the Report shall be borne by the respective parties.

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 Suit.

9. Interim Application is accordingly, stood over to 5th April 2023 under the caption for *ad-interim* relief.

[R.I. CHAGLA J.]