

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1115 OF 2005
IN
SUIT NO.3553 OF 2004

M/s Mahendra Builders

...Plaintiffs

v/s

Brihan

Mumbai

Municipal

Corporation

and ors.

...Defendants

Mr V.A. Thorat with Mr Vaibhav Sugdare i/b M/s K.

Ashar and Co. for Plaintiffs.

Mr Tiwari i/b M/s K.P. Tiwari and Co. for Defendant

Nos.2 and 3.

Mr A.Y. Sakhare i/b Mr M.D. Cloron for Defendant Nos.4

to 10.

CORAM : D.K. DESHMUKH J.

DATE : 24TH NOVEMBER 2006.

P.C. :-

1. In the facts and circumstances of the case, some arrangement to operate during the pendency of the suit, so that interest of all the parties involved are not permanently injured, has to be made. It is an admitted position that the building is fully occupied. According to the Corporation, there are arrears of taxes to be recovered. The Corporation claims that it has reentered the property, even then the Corporation cannot claim the building because the building admittedly was not put up by the Corporation. In these circumstances therefore, in my opinion, following interim arrangement would be in the interest of justice.

. A) The parties shall maintain status-quo until further orders of the Court in so far as the occupation of the building and its occupants are concerned.

. B) Without prejudice to its rights and contentions, the defendant No.1 - Corporation shall serve notice on the plaintiffs for recovery of the current as well as arrears of taxes. On receiving the notice, the plaintiffs, subject to its entitlement to challenge the levy of taxes and quantum in accordance

with law, shall pay the taxes. The payment made by the plaintiffs shall be subject to the final order that may be passed in the suit.

. C) The plaintiffs shall be entitled to recover rent from the occupants of the building who were paying rent to the plaintiffs before the order of re-entry was made by the Corporation. The plaintiffs, however, shall not be entitled to increase the amount of rent save and except claiming any additional amount on account of increase in taxes and other outgoings.

. D) The plaintiffs shall be entitled to continue to prosecute the suits that have been filed by the plaintiffs against the occupants of the building, however, in case in those suits a decree adverse to the interest of occupants is made, the same shall not be put to execution without leave of this Court.

. E) The plaintiffs shall, subject to the final order that may be passed in the suit, be entitled to manage the affairs of the building and protect it as they were doing before the order of re-entry is made by the Corporation.

. F) In case in the opinion of the Bombay Municipal Corporation, any occupant has carried out any

unauthorised construction or extension, the Corporation shall be entitled to proceed against such occupants in accordance with law. The plaintiffs shall also be entitled to prosecute any remedy that may be available to the plaintiffs under the law against such unauthorised structures.

. F) The plaintiffs shall maintain accounts of the amounts recovered by the plaintiffs from the occupants and the accounts maintained by the plaintiffs shall be annually filed in this Court with copies to all the defendants.

. G) In case according to the Corporation default is made in payment of taxes or dues of the Corporation by the plaintiffs as directed above, the Corporation shall be entitled to move this Court seeking modification of this order or even any further order.

. H) If any of occupants or tenants commit default in payment of their dues to the plaintiffs or commit any action which entitles the plaintiffs to take any steps against them, the plaintiffs shall be entitled to initiate action against them in accordance with law.

Notice of motion is disposed off.

. Parties to act on the copy of this order duly
authenticated by the Associate / Private Secretary as
true copy.

. Certified copy expedited.
