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

## APPEAL NO. 45 OF 2023
## IN
## NOTICE OF MOTION NO.1115 OF 2005
## IN
## SUIT NO.3553 OF 2004



Municipal Corporation of Greater Mumbai
having office at Head Office, Municipal Corporation Bldg., Mahapalika Marg, Fort Mumbai 400 001.

**Appellant (Orig. Defendant No. 1)**

... 

*Versus*

1. Mahendra Builders
having office at Cliffet Pockhanwala Road Worli, Mumbai 400 025.

2. The Empire Building Occupants Welfare Association,
a body claiming to be registered under the Societies Registration Act, 1860 and also under The Bombay Public Trusts Act, 1950 having its office at 3rd Floor, Mahendra Chambers Dr.D.N. Road Fort, Mumbai 400 001.
(through its Secretary Mr.Hanif Mohd.. Modak having its office at Mahendra Chambers, Dr. D.N. Road, Fort, Mumbai 1

3. Mahendra Chambers & Occupants Welfare ) Association
a body claiming to be registered

under the Societies Registration Act, 1860 and also under the Bombay Public Trusts Act 1950 having its office at 3rd floor, Mahendra Chambers, Dr.D.N. Road Fort, Mumbai 400 001)
(through its President/Secretary having its office at Mahendra Chambers, Dr. D.N. Road, Fort, Mumbai 400 001.

4 The Chairman of the Mahendra Chambers & Occupants Welfare Association
having its office at Mahendra Chambers, Dr.D.N. Road Fort, Mumbai 400 001.

5 Minu R. Shroff

6 Siloo K. Kavarana

7 Dinshah R. Mehta

8 Dadi B. Engineer

9 Dinshaw K. Tamboly

10 Manek Engineer

11. Burjor Antia
Nos.4 to 10 are the present Trustees of the Parsee Panchayat Funds & Properties Trust, Bombay and having their office at 209, Dr. Dadabhai Naoroji Road, Fort Mumbai 400 001. ... Respondents

AND

APPEAL NO.347 OF 2019

IN

NOTICE OF MOTION NO.1115 OF 2005

IN

SUIT NO.3553 OF 2004

The Empire Building Occupants
Welfare Association, a body claiming To
be registered under the Societies
Registration Act 1860 and also under
The Bombay Pubic Trusts Act,
1950, having its office at
3rd Floor, Mahendra Chambers
Dr. D.N. Road, Fort, Mumbai 400 001
(through its Secretary Mr. Hanif Mohd.
I. Modak) having his office at
Mahendra Chambers, Dr. D.N. Road
Fort, Mumbai 400 001 **Appellant (Orig. Defendant No. 2)**

... 

*Versus*

1. Mahendra Builders
A registered Partnership firm
Carrying on business at Cliffet
Pochkhanwala Road,
Worli, Mumbai 400 025

2. Brihan Mumbai Municipal Corporation
Of Greater Mumbai, a Statutory
Corporation Constituted
Under the provisions of the
Mumbai Municipal Corporation
Act, 1888 and having its central
Office at the Corporation Bldg.
Mahapalika Marg, Fort
Mumbai 400 001

3. The Chairman of the
Mahendra Chambers &
Occupants Welfare Association
having office At Mahendra
Chambers, Dr. D.N. Road
Fort, Mumbai 400 001

4(a) ARMAITY TIRANDAZ RUSTOM

5(a) VIRAF DINSHAW MEHTA

6(a) ERVAD C.A. XERXES VISPI DASTUR

7(a) ANAHITA YAZDI DESAI

8(a) HOSHANG J. B. LAL

9(a) MAHARUKH KOBAD NOBLE

10(a) ADIL JIJI MALIA
Nos. 4(a) to 10(a) all being the current Trustees of the Parsee Panchayat Funds & Properties Trust Bombay and having their office at 209, Dr. Dadabhai Naoraji Road, Fort, Mumbai 400 001

11. STATE OF MAHARASHTRA
Through Urban Development Department,Mantralaya, Mumbai

... Respondents

WITH
INTERIM APPLICATION NO.931 OF 2020
IN
APPEAL NO.347 OF 2019

The Empire Building Occupants Welfare Association, a body claiming To be registered under the Societies Registration Act 1860 and also under The Bombay Pubic Trusts Act, 1950, having its office at 3rd Floor, Mahendra Chambers Dr. D.N. Road, Fort, Mumbai 400 001 (through its Secretary Mr. Hanif Mohd. I. Modak) having his office at Mahendra Chambers, Dr. D.N. Road Fort, Mumbai 400 001

... Applicant

***In the matter between:***

The Empire Building Occupants Welfare Association, a body claiming To be registered under the Societies Registration Act 1860 and also under The Bombay Pubic Trusts Act, 1950, having its office at 3rd Floor, Mahendra Chambers Dr. D.N. Road, Fort, Mumbai 400 001 (through its Secretary Mr. Hanif Mohd. I. Modak) having his office at Mahendra Chambers, Dr. D.N. Road Fort, Mumbai 400 001 ... **Appellant (Original Defendant No. 2.)**

*Versus*

1. Mahendra Builders
   A registered Partnership firm
   Carrying on business at Cliffet
   Pochkhanwala Road,
   Worli, Mumbai 400 025

2. Brihan Mumbai Municipal Corporation
   Of Greater Mumbai, a Statutory Corporation Constituted
   Under the provisions of the Mumbai Municipal Corporation Act, 1888 and having its central Office at the Corporation Bldg.
   Mahapalika Marg, Fort
   Mumbai 400 001

3. The Chairman of the Mahendra Chambers & Occupants Welfare Association having office At Mahendra Chambers, Dr. D.N. Road
   Fort, Mumbai 400 001

**4(a)** ARMAITY TIRANDAZ RUSTOM

**5(a)** VIRAF DINSHAW MEHTA

**6(a)** ERVAD C.A. XERXES VISPI DASTUR

**7(a)** ANAHITA YAZDI DESAI

**8(a)** HOSHANG J. B. LAL

**9(a)** MAHARUKH KOBAD NOBLE

**10(a)** ADIL JIJI MALIA
Nos. 4(a) to 10(a) all being the current Trustees of the Parsee Panchayat Funds & Properties Trust Bombay and having their office at 209, Dr. Dadabhai Naoraji Road, Fort, Mumbai 400 001

**11.** STATE OF MAHARASHTRA
Through Urban Development Department,Mantralaya, Mumbai

**... Respondents (Original Defendant No. 11)**

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*Mr. Anil Y. Sakhare, Senior Advocate ak/w Mr. Sunil C. Khandagale and Mr. A. A. Dalal i/by Ms. Komal Punjabi for the Appellant in Appeal No. 45 / 2023 – BMC.*

*Mr. Saket Mone a/w Mr. Prituish Shetty a/w Mr. Subit Chakrabarti a/w Ms. Khushnumah Banerjee i/by Vidhi Partners for the Appellant in Appeal No. 347/ 2019 and for the Respondent No. 2 in Appeal No. 45/2023.*

*Mr. Aspi Chinoy, Senior Advocate a/w Mr. Karl Tamboly a/w Ms. Shweta Jaydev a/w Ms. Azraa Millwalla and Ms. Feroza Bharucha i/b M/s. Rashmikant and Partners for the Respondent No. 1 in both appeals.*

*Smt. Gauri Sawant, AGP for the Respondent No. 11 / State of Maharashtra*

*Mr. Dinyar Madon, Senior advcoate i/by Mr. Mangesh D. Chawan a/w Ms. Prashansa Jain for the Respondent No. 4 to 10 in both appeals.*

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|---|---|
| **CORAM:** | **M.S. Sonak & Advait M. Sethna, JJ.** |
| **RESERVED ON:** | **28 NOVEMBER 2025** |
| **PRONOUNCED ON:** | **01 DECEMBER 2025** |

**JUDGMENT: -** *(Per M. S. Sonak, J.)*

**1.** Heard learned Counsel for the parties.

**PRELIMINARIES**

**2.** The learned Counsel for the parties state that both these Appeals can be disposed of by a common judgment and order, since they challenge the order dated 11 February 2019 disposing of Notice of Motion No. 1115 of 2005 in Suit No. 3553 of 2004, along with Notice of Motion No. 1320 of 2013.

**3.** There was a 315-day delay in instituting Appeal No. 45 of 2023 (earlier Appeal (ST) No. 29 of 2020). By order dated 10 January 2023, a Co-ordinate Bench declined to condone the delay and, consequently, this Appeal was dismissed. However, the Municipal Corporation of Greater Mumbai (MCGM) took the matter before the Hon'ble Supreme Court via Civil Appeal No. 4936 of 2023. This Appeal was allowed

by order dated 07 August 2023. The delay was condoned, and Appeal (ST) No. 29 of 2020, instituted by MCGM, was restored to the Court's file for a decision on the merits, along with Appeal No. 347 of 2019. The Hon'ble Supreme Court requested this Court to hear both the Appeals simultaneously on the appointed date or as expeditiously as possible.

**4.** On 28 March 2025, the Co-ordinate Bench posted both these Appeals for final disposal on 02 May 2025, but the matters came before the Bench comprising M. S. Sonak and Jitendra Jain, JJ., only on 13 June 2025. On this date, they were posted for final disposal on 22 August 2025. After that, the matters came up before this Bench on 24 November 2025 and were posted for final hearing on 27 November 2025. The matters were heard on 27 and 28 November 2025, and upon conclusion of the arguments, were reserved for orders.

**5.** As mentioned earlier, both the Appeals contest the learned Single Judge's impugned order dated 11 February 2019, which permitted Notice of Motion No. 1115 of 2005 filed by the Respondent No. 1, Mahendra Builders and Others (Plaintiff), and dismissed Notice of Motion No. 1320 of 2013 filed by the Appellant, the Empire Building Occupants Welfare Association (Defendant No. 3), in Suit No. 3553 of 2004. Consequently, for convenience, we refer to Mahendra Builders and Others as the Plaintiff, MCGM as Defendant No. 1, and the Empire Building Occupants Welfare Association as Defendant No. 2.

## GENESIS

6. The suit and consequently these Appeals concern Plot No. A1 at DN Road bearing C. S. No. 1390 of 4th Division and Cadastral Survey No. 1/1389 of 4th Division, admeasuring about 1298.01 square yards (suit property). There is a building known as 'Mahendra Chambers' situated thereon. The building was earlier known as the 'Empire Building'.

7. The suit property was leased by the trustees of the improvement trust of the city of Bombay (predecessors of MCGM) for the term of 99 years to Lallubhai Dharamchand and Others, effective from 1901. The Lessees assigned the same to Bikaji Taraporwala, who constructed the building on the said property. Upon his demise, the executors of Taraporwala's will surrendered the lease in favour of the MCGM and secured in their favour two leases with respect to the original Plot A and B-1 (Narayana Trust) for the unexpired period of the original lease, i.e., 37 years and 6 months, until 13 December 2000. Plot A was subdivided into Plots A1 and A2, of which the suit property is Plot A1. The learned Counsel for the parties made it clear that neither in the suit nor in this Appeal are we concerned with Plot A2.

8. By indenture of assignment or deed of transfer dated 20 January 1966, the surviving executors and trustees of the last will and testament of Taraporwala assigned and transferred the suit plot with the buildings erected thereon to the Parsi Panchayat Trust. The Plaintiff has pleaded that from that time,

the Parsi Panchayat collected rents from the tenants of the building and paid the lease rent for the plot, as well as property taxes, etc., to MCGM.

**9.** On 23 August 1974, under unregistered Articles of Agreement, the Parsi Panchayat agreed to sell the building and assign the leasehold rights in relation to the suit plot for the residual period to the Plaintiff. On 24 June 1975, the Charity Commissioner, Bombay, granted permission for such a sale. It is MCGM's case that such permission was valid only for the period of six months.

**10.** On 04 June 1986, the MCGM wrote to the Plaintiff, enclosing licences dated 14 February 1986 for the transfer of the leasehold interest from the Parsi Panchayat to the Plaintiff. The MCGM requested the Plaintiff to submit a true copy of the deed of assignment to its office for record within four months. Subsequently, there was correspondence between the parties, with the Plaintiff and the Parsi Panchayat claiming that executing the registered assignment deed was not feasible due to the lack of orders and permissions from the Charity Commissioner, in the form of change reports, etc. They argued that the matter was still pending before the Charity Commissioner in the form of change reports and related documents.

**11.** The 99-year lease for all the properties in Schedule–W, including the suit plot, expired on 13 December 2000. There is documentary evidence of the MCGM accepting rentals from

the Plaintiff. However, what is significant are the letters dated 30 January 2002, 20 February 2002, addressed by the MCGM to the Plaintiff and the Parsi Panchayat. By these letters, issued well after 13 December 2000, the MCGM called upon the Plaintiff and the Parsi Panchayat to submit copies of the deed of assignment to enable the MCGM to bring the Plaintiff's name on record as the lessee of the suit plot.

**12.** The letter of 28 February 2002 takes cognisance of the circumstance that the lease period for the plot in question had expired on 13 December 2000, yet calls upon the Plaintiff and the Parsi Panchayat to submit the deed of assignment duly registered.

**13.** On 04 March 2003, the Plaintiff and the Parsi Panchayat submitted a registered deed of assignment in respect of the suit plot and Plot A2 to MCGM. This deed referred to MCGM's license or permission dated 04 June 1986. On 11 June 2003, the Plaintiff, pursuant to the deed of assignment dated 04 March 2003, requested the MCGM to register its name as the lessee of the suit plot.

**14.** On 21 July 2003, the MCGM wrote to the Plaintiff alleging for the first time that since the lease period had expired, the assignment deed was a void document. This communication claimed that the suit plot now vests in the MCGM, since the MCGM took possession of the suit plot on 02 May 2003 by affixing a notice and conducting a Panchanama at the site.

**15.** The Plaintiff contested the above position and ultimately filed Suit No. 3553 of 2004 on 13 September 2004, seeking a declaration that the Plaintiff are continuing in possession of Plots A1 [suit property] and A2, and that the ownership of the building on Plot A-1, and that the purported re-entry and taking of possession are illegal. The Plaintiff, inter alia, prayed that MCGM be ordered to grant a lease.

**16.** Notice of Motion was taken out in this suit. An ad-interim order was granted by the learned Single Judge, and Defendant No. 2, by Notice of Motion No. 1320 of 2013, applied for vacation of the ad-interim reliefs. By the impugned order, the learned Single Judge has allowed the Plaintiff's Notice of Motion No. 1115 of 2005 and rejected the Defendant No. 2's Notice of Motion No. 1320 of 2013. Hence, this Appeal.

## APPELLANT'S CONTENTIONS

**17.** Mr Sakhare submitted that the learned Single Judge's order is perverse and therefore warrants interference. He submits that the crucial issue, i.e., about the Parsi Panchayat being legally incompetent to assign leasehold rights in the suit plot after 13 December 2000, was not considered by the learned Single Judge before wrongfully concluding that the Plaintiff had established that it was the lawful assignee of the leasehold rights and consequently was entitled to protection as a lessee holding over.

**18.** Mr Sakahare submitted that post 13 December 2000, the Parsi Panchayat was only a lessee holding over or a tenant

at sufferance. Such a status was not permissible to be assigned, as was held by the Hon'ble Supreme Court in the case of **IOCL Vs. Sudera Realty P Ltd**[1] and **Asgar & Ors. v. Mohan Varma & Ors.**[2]. Therefore, based upon the deed of assignment of 04 March 2003, the Plaintiff could claim no title and no semblance of juridical possession or right to the suit plot. Without examining this crucial aspect, the learned Single Judge's order is vitiated by perversity, since it proceeds to protect the Plaintiff who has no rights either in law or in fact.

**19.** Mr Sakhare submitted that even the case of a lessee holding over does not apply to properties vested in public authorities like the MCGM. He relied on **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd.**[3] to support this proposition.

**20.** Mr. Sakhare submitted that there was no privity of contract or any other legal relationship between the MCGM and the Plaintiff. He submitted that this is not a case in which the Parsi Panchayat has raised any claim to be a lessee at sufferance. He submitted that the Plaintiff in fact lacks locus-standi to question MCGM's action, and without considering this crucial aspect, the learned Single Judge could not have made the impugned order.

**21.** Mr Sakhare submitted that the issue of possession can never be considered in a vacuum. A prima facie enquiry into

[1] (2023) 16 SCC 704

[2] (2019) 2 SCR 664

[3] (2016) 11 SCC 406

the right of the Plaintiff to remain in alleged possession must be considered for determining whether such a Plaintiff has made out a prima facie case. He submits that the impugned order fails to make such an inquiry. Besides, the impugned order also fails to take cognisance yet another crucial fact that the Plaintiff's Writ Petition No. 2421 of 2003 seeking a mandamus to the MCGM to renew the lease or to grant the lease was already dismissed by this Court on the ground that the title and interest of the Plaintiff to the suit plot was in serious dispute. In such circumstances, Mr Sakhare submitted that there was no question of granting any injunction favouring the Plaintiff.

**22.** Mr Sakhare submitted that on 13 December 2000, i.e., the date of expiry of the lease term, the property had already vested in the State Government. Therefore, even the MCGM was not entitled to deal with the suit plot or renew the lease. He submitted that the actions, such as the acceptance of rent and the two communications issued after 13 December 2000, have to be construed in this context. Based upon such acceptance of rent without prejudice or the two communications, no injunction could have been granted in favour of the Plaintiff or against the MCGM.

**23.** Mr Sakhare argued that there was nothing wrong with MCGM's re-entry and that, in any case, the alleged infirmities in resuming possession cannot serve as a valid reason for granting an injunction to the Plaintiff, especially when the Plaintiff has failed to establish even a tittle of title to the suit

property. He contended that the Plaintiff must stand or fall on its own merit and cannot seek support from any supposed weakness in the Defendant's case. He further argued that, since the learned Single Judge failed to appreciate this aspect, the impugned order is vitiated by perversity and warrants interference.

**24.** Mr. Sakhare argued that the possession of a Plaintiff who has failed to establish any right to the suit property cannot be protected by any injunctive relief against the true owner or title holder. He submitted that if the title of the Defendant to the property is establish, then the so-called possession of the Plaintiff would be presumed to be permissive in nature. Such permissive possession, in the absence of any concrete pleadings backed by documents to support the Plaintiff's claim cannot be protected by any protective injunction. He relied on **Maria Margarida Sequeira Fernandes & Ors Vs. Erasmo Jack De Sequeira (Dead) through LRS.**[4] to support these contentions.

**25.** Mr Sakhare submitted that, for all the above reasons, the impugned judgment and order warrant interference.

**26.** Mr. Mone, the learned Counsel for the Appellant in Appeal No. 347 of 2019, adopted Mr Sakhare's arguments and added that the impugned judgment and order warranted interference because the same had disabled the MCGM from initiating eviction proceedings against the Plaintiff under the provisions of the Mumbai Municipal Corporation Act, 1888, in

[4] (2012) 5 SCC 370

general and Section 105 thereof in particular. He made it clear that this submission was strictly without prejudice to the association's contention that it was the association which was in possession of the suit plot and not the Plaintiffs.

**27.** Mr. Mone also submitted that acceptance of rent by MCGM without prejudice or the address of the communications dated 30 January 2002 or 20 February 2002 is of no avail to the legal position that the so-called rights of a lessee at sufferance can never be assigned or that between 13 December 2000 and 2003 the suit plot was vested in the State Government.

**28.** Mr Mone submitted that the learned Single Judge has failed to consider the aspects of a prima facie case, balance of convenience, irreparable loss and injury before granting an injunction to the Plaintiffs.

**29.** For all the above reasons, Mr. Mone submitted that the impugned judgment and order warrant interference.

## RESPONDENT'S CONTENTIONS

**30.** Mr Chinoy, learned Senior Advocate for the Plaintiffs, submitted that the assignment of lease from the Parsi Panchayat to the Plaintiffs was specifically approved by the MCGM on 4 June 1986. This approval did not specify a period for submitting the registered assignment deed. The four-month period was to commence on the date of execution of the assignment. This was because the MCGM was aware of the proceedings pending before the Charity Commissioner and

the difficulties in obtaining the formal assignment deed.

**31.** Mr Chinoy submitted that the formal Deed of Assignment, though executed on 04 March 2003, concerned the assignment of leasehold rights of the Parsi Panchayat for the remainder of its term, effective from 4 June 1986. Therefore, the Deed of Assignment was not for assigning the Parsi Panchayat's rights as a lessee at sufferance. Accordingly, Mr Chinoy submitted that the decision referred by Mr Sakhare and Mr Mone does not apply.

**32.** Mr Chinoy submitted that the plea about the Parsi Panchayat having no legal competence to execute the deed of assignment was never even argued by the MCGM or the 2nd Defendant before the learned Single Judge. This is because the Deed of Assignment was quite clear in that the actual leasehold rights for the remainder period were assigned and transferred. He submits that the date of the execution of the Deed of Assignment is not as important as the contents of such deed, which were quite clear in the present case.

**33.** Mr Chinoy submitted that even after 13 December 2000, MCGM addressed the communications dated 30 January 2002 and 20 February 2002, calling upon the Plaintiff and Parsi Panchayat to submit registered assignment deeds. This was after taking cognisance of the lease expiry on 13 December 2000. From the correspondence on record. It is apparent that the MCGM was confident of a 30-year renewal from the State Government and even committed to considering the Plaintiffs' case on the merits for renewal of the lease. He therefore

submitted that the Plaintiff had made out much more than a mere tittle of title to remain in possession of the suit plot. He pointed out that the possession of the suit plot was specifically granted by the Parsi Panchayat to the Plaintiff, and this is a well-documented fact, as it is admitted in the Parsi Panchayat's written statement.

**34.** Mr Chinoy submitted that this volte-face by the MCGM has its genesis in the meeting held on 20 January 2002 between the members of the 2nd Defendant and the then Chief Minister. At this meeting, it appears that the MCGM was directed to allot the suit plot to the 2nd Defendant. Even the minutes acknowledge that such an allotment would be grossly improper, stating that it should not be treated as a precedent.

**35.** Mr. Chinoy submitted that the Plaintiff has placed on record several instances where leases were renewed or granted by the MCGM in identical or similar circumstances without raising the untenable defences now raised in the Plaintiff's case. He referred to the Plaintiff's rejoinder and the list of instances in which such renewals were granted. He submitted that the Plaintiff was being discriminated against because of the assurances given in the meeting with the then Chief Minister.

**36.** Mr Chinoy submitted that there was ample evidence on record to show that the Plaintiff was in settled possession since 1976. Therefore, the MCGM could not have simply claimed to have re-entered or resumed possession by affixing the notice on the building or drawing out a Panchanama. He

submitted that no due process of law was adopted by the MCGM and given the law laid down in **State of Uttar Pradesh Vs. Maharaja Dharmendar Prasad Singh & Ors**[5], the claim of MCGM could never have been countenanced. He also relied on **Krishna Ram Mahale (Dead), BY HIS LRS. Vs. Mrs. Shobha Venkat Rao**[6] and **S. R. Ejaz Vs. Tamil Nadu Handloom Weavers' Cooperative Society Ltd**[7] to support these contentions.

**37.** Finally, Mr Chinoy submitted that the impugned judgment and order were discretionary. He submitted that the learned Single Judge had correctly exercised his discretion in these matters and there was no hint of perversity. He therefore relied on **Ramakant Ambalal Choksi Vs Harish Ambalal Chokshi & Ors**[8] and **Wander Ltd. Vs. Antox India P. Ltd.**[9] to submit that as an Appellate Court, we ought not to interfere with the well-reasoned order of the learned Single Judge.

**38.** For all these reasons, Mr Chinoy submitted that these Appeals be dismissed.

## EVALUATION OF RIVAL CONTENTIONS

**39.** The rival contentions now fall for our determination.

**40.** This is an Appeal against a discretionary order by which the learned Single Judge has basically injuncted the MCGM from interfering with the Plaintiff's possession of the suit

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5 (1989) 2 SCC 205

6 (1989) 4 SCC 133

7 (2002) 3 SCC 137

8 Civil Appeal No. 13001 of 2024 (SLP (Civil) No. 252 of 2013 decided on 22 November 2024

9 1990 Supp SCC 727

property without following the due process of law. No doubt, other reliefs are also granted, e.g., restraining the MCGM from collecting rents from the tenants of the building in the suit plot and so on. However, the main relief is to restrain the MCGM from interfering with the Plaintiff's possession of the suit property or from ousting, or attempting to oust, the Plaintiff from the suit property, otherwise than by following due process of law. Therefore, at the outset, it is necessary to outline the scope of interference by the Appeal court against such discretionary orders.

**41.** In the case of *Wander Ltd. Vs. Antox India P. Ltd.* (supra), the Hon'ble Supreme Court has held in Appeals against discretionary orders, *the appellate court the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.*

**42.** In *Ramakant Ambalal Choksi* (supra), the Hon'ble Supreme Court noted that the principles of law in *Wander Ltd.*

*Vs. Antox India P. Ltd.* (supra) have been reiterated in a number of subsequent decisions. *However, over a period of time as regards the scope of interference with discretionary orders has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.*

**43.** In **Neon Laboratories Ltd. v. Medical Technologies Ltd.,** reported in (2016) 2 SCC 672, this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court held that to interfere with an order granting or denying a temporary injunction, perversity must be demonstrated in the trial court's finding.

**44.** In **Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan** reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in *Wander* (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court.

**45.** In **Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.,** reported in (2023) 1 SCC 634, it was observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has the advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides matters that should be decided by the trial court, there would be no need for a hierarchy of courts.

**46.** In **Monsanto Technology LLC v. Nuziveedu Seeds Ltd.** reported in (2019) 3 SCC 381, the Hon'ble Supreme Court observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

**47.** After considering all the above decisions, the Hon'ble Supreme Court in the case of *Ramakant Choksi* (supra) has held that the appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours

laid down in the *Wander* (supra) case.

48. In *Ramakant Choksi* (supra), the Hon'ble Supreme Court also reiterated that the Court should not confuse the existence of a prima facie case with a prima facie title, which is required to be established only on evidence at trial. A prima facie case is a bona fide question raised, which requires investigation and decision on the merits. However, the existence of a prima facie case alone is not sufficient. The Plaintiff must establish that non-interference by the Court would result in an irreparable injury and that there is no other effective remedy available to the party except one to secure the injunction, and he needs the protection from the consequences of apprehended injury or dispossession.

49. The Court explained that irreparable injury does not mean that there must be no physical possibility of repairing the injury, but rather that the injury must be a material one, namely one that cannot be adequately compensated by damages. The Court also referred to the third prerequisite for the grant of an injunction, i.e., the balance of convenience being in favour of granting such an injunction. Here, the Court must exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties; the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If, on weighing the competing possibilities or probabilities of likelihood of injury, the Court considers that, pending the suit, the subject matter should be

maintained in status quo, an injunction would be issued. (See: **Dalpat Kumar v. Prahlad Singh** reported in **(1992) 1 SCC 719)**.

**50.** The Court then explained the meaning of the expression "perverse". By referring to **Moffett v. Gough** reported in (1878) 1 LR 1r 331, the Court held that any order made in the conscious violation of pleading and law is a perverse order. The Court also observed that the perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. By referring to **Godfrey v. Godfrey** reported in 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

**51.** The Court also referred to various dictionary meanings of the expression "perverse". The Court explained that a wrong finding should stem from a complete misreading of the evidence, or from conjecture and surmise. The safest approach to perversity is the classic approach of the reasonable man's inference from the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: **Damodar Lal v. Sohan Devi and others** reported in (2016) 3 SCC 78).

**52.** Based on the reasons discussed hereafter and given the restrictive parameters outlined above, we are satisfied that there is no basis to interfere with the discretion exercised by the learned Single judge in this matter. The order of the learned single judge cannot be regarded as perverse. None of the appellants has established that the view expressed in the impugned order is capricious, arbitrary, or perverse. Although in the context of the prima facie volte-face after the meeting with the Hon'ble Chief Minister held on 20 January 2002, the plaintiff alleges malafides against the appellants, the appellants make no such claims against the Plaintiff. The impugned order suitably addresses the triple tests for the grant of interim relief.

**53.** As regards prima facie case, the learned Single Judge has taken due cognizance of the MCGM's permission dated 4 June 1986 for assignment of leasehold rights by the Parsi Panchayat to the Plaintiff; the fact that at least prima facie the plaintiff has been in possession of the suit property pursuant to the documentation by Parsi Panchayat in its favour; the correspondence addressed by the MCGM to the Parsi Panchayat and the Plaintiff in relation to the assignment of leasehold rights or the renewal or grant of lease to the Plaintiff in respect of the suit property. The impugned order also notes that the correspondence and the commitments made therein continued after 13 December 2000, i.e., the expiry of the lease period for Schedule-W properties, including the suit property.

**54.** Most importantly, the impugned order, after accepting the Plaintiff's case of being in possession of the suit property for over 25 years, restrains the MCGM, which is a public authority, from interfering with the Plaintiff's possession except through proper legal procedures. The impugned order, therefore, does not prevent the MCGM or any other party with the right to do so from securing the ouster of the Plaintiff by following due process of law. However, the impugned order prohibits the MCGM from interfering with or attempting to remove the Plaintiff from the suit property based on vague re-entry powers, by posting a notice on the building on the suit plot, or by simply drawing a Panchanama.

**55.** The aspects of the balance of convenience and irreparable loss have been properly considered in the impugned order. In any case, once it is prima facie established that the plaintiff was in possession of the suit property from 1986, and that the MCGM, claiming a superior title, was attempting to dispossess the plaintiff otherwise than through proper legal procedures, the balance of convenience favoured granting an injunction. Irreparable loss would occur if such an injunction were not granted because the injury to the plaintiff was not capable of being compensated solely in monetary terms.

**56.** Accordingly, if the impugned order is reviewed by applying the above principles and perspectives, we cannot hold that the impugned order is perverse and warrants interference. In exercising discretion and granting the interim

relief, the Learned single judge has reasonably appreciated the triple aspects of a prima facie case, balance of convenience and irreparable loss and injury. A protective relief to maintain the status quo is granted pending the adjudication of the serious issues arising in the suit. At the same time, the impugned order, in no manner, prevents the MCGM or any other party, if so entitled, from taking recourse to the due process of law as against the Plaintiff.

**57.** The contention that, in this case, the Parsi Panchayat has purported to assign its nebulous rights as a tenant in sufferance or a lessee holding over to the Plaintiff vide Deed of Assignment dated 4 March 2003, cannot be a sufficient ground to conclude perversity and interfere with the exercise of discretion by the learned Single Judge.

**58.** This is because, firstly, such a contention, based upon *Indian Oil Corporation* (supra) or *Asgar Vs. Mohan Varma* (supra) does not appear to have been squarely raised before the learned Single Judge. Secondly, the Deed of Assignment dated 4 March 2003 refers to the assignment of the leasehold rights in the suit plots for the remainder of the term allotted to the Parsi Panchayat, and not to the assignment of tenancy-at-sufferance rights.

**59.** No doubt, the decisions in *Indian Oil Corporation* (supra) and *Asgar Vs. Mohan Varma* (supra) hold that once the lease period has expired, the tenant holding over or the tenant at sufferance cannot assign its status or the limited

rights that go with it to any other party. Based on such a so-called assignment, the so-called assignee cannot claim the status of a tenant at sufferance. In this case, the lease period expired on 13 December 2000, and the deed of assignment was executed only on 4 March 2003.

60. The Plaintiff, as the assignee and the Parsi Panchayat, as the assignor, however, argue that the date on which the assignment agreement was executed is not as important as its content. They argue that this assignment, though executed after the expiry of the lease period, pertains to the unexpired lease period from 1974 to 2000, and therefore, the Plaintiff steps into the Parsi Panchayat's shoes from 1974 or at least 1986.

61. As noted earlier, the above could be a contentious issue, and if no other issues, facts, or circumstances had been involved, the plaintiff's prima facie case might have weakened considerably. However, it seems the MCGM did not interpret or understand the matter this way in its correspondence. Otherwise, there would be no reason for the MCGM to address the communications dated 30 January 2002 and 20 February 2002, calling on the Plaintiff and Parsi Panchayat to submit registered assignment deeds. This was after acknowledging the lease expiry on 13 December 2000.

62. Furthermore, this point does not appear to have been raised before the Learned Single Judge; otherwise, it would have been reflected in the impugned order, or at least the

MCGM would have initiated appropriate proceedings before the Learned Single Judge to correct the record at the earliest. The issue now raised is not a pure question of law but a mixed question of law and fact. Therefore, even if we accept that there is some merit in the Appellants' argument on this mixed question of fact and law, there are other important factors that still support exercising discretion in favour of the plaintiff. Based on this factor, we cannot say that the discretion was perversely exercised in this matter.

63. As is well settled, the Plaintiff, at this stage, is expected to make out a prima facie case and not a prima facie title. The plaintiff has prima facie established its settled possession for the last over 25 years. There are documents and pleadings that prima facie support this position. The MCGM had, prima facie, permitted the Parsi Panchayat to assign leasehold rights to the plaintiff in 1986. MCGM, in its correspondence, including after 13 December 2000, was repeatedly calling upon the Plaintiff and the Parsi panchayat to submit the duly registered assignment deed so that the MCGM could record the Plaintiff's name as the lessee of the suit property. The Parsi Panchayat also supports the plaintiff's case unreservedly.

64. The MCGM also grudgingly accepts that the Plaintiff, at least until the MCGM allegedly took over possession in May 2003, by merely affixing a re-entry notice and conducting a panchanama, was in possession of the suit property. If the MCGM's case was that the Plaintiff was never in possession of the suit property or the building thereon, there was no

question of the MCGM claiming to have taken over possession in May 2003. Even settled possession cannot be disturbed without recourse to the law.

65. The Learned Single Judge, on a cumulative and fair consideration of the materials on record, found that the Appellants' case about the Plaintiff having not even a tittle of a title to remain in possession or that the MCGM was entitled to oust the Plaintiff by simply affixing a notice of re-entry and drawing out a panchanama to be prima facie unacceptable. If, based on this and documentary evidence on record, the Learned Single Judge deemed it appropriate to exercise discretion in favour of the Plaintiff, such exercise can hardly be criticised as perverse.

66. The MCGM, by virtue of its superior title, cannot be permitted to take the law into its own hands and purport to re-enter into possession merely by affixing a notice or carrying out a panchanama indicating that it has resumed possession. Due process of law must be followed before ousting or dispossessing any party, and any attempt to act otherwise can be resisted by such party by approaching the competent Court and securing a protective interim relief in the first instance.

67. Typically, in such a case, if the Court is satisfied that the Plaintiff meets the three tests mentioned earlier, the Court would exercise its discretion to prevent the defendants from ousting or dispossessing the plaintiff without due process of law, leaving it open to the superior title holder to take

recourse to the due process of the law for securing the possession. This is what the impugned order states, and in the absence of any perversity, there is no ground to interfere with the discretion exercised by the Learned Single Judge.

68. The Hon'ble Supreme Court has made strong observations regarding parties [including public authorities] taking forcible possession of immovable property without recourse to the due process of law.

69. In *Maharaja Dharmendar Prasad Singh* (supra), the Hon'ble Supreme Court observed as follows:-

> *"31 Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.*
>
> *32. In the result, the appeals of the State of Uttar Pradesh (SLP Nos. 4761 and 4762 of 1987) and of the LDA (SLP Nos. 13298 and 11498 of 1987) directed against the common Judgment dated December, 8, 1986 in so far as it pertains to WP 6819 of 1985 and WP 367 of 1986 are allowed and the said two writ petitions are dismissed, leaving the question of the legality and validity of the purported cancellation of the lease and the defence of the lessees open to be urged in appropriate legal proceedings, whenever and wherever Government proceeds to initiate action in accordance with law for resumption of possession on the basis of the alleged cancellation or forfeiture of the lease. Any developmental work that may be made by the lessees or at their instance would, of course, be at their own risk and shall be subject to the result of such proceedings.*

**70.** The above principle was reiterated in *S.R. Ejaz* (supra), as is evident from the following observations:-

> *"8 In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in State of U. P v. Maharaja Dharmander Prasad Singh dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law."*

**71.** Finally, reference is necessary to the decision in *Krishna Rama Mahale*(supra) in which the Hon'ble the Hon'ble Supreme Court held that *it was well settled law in this country that where a person is in settled possession of property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in Lallu Yeshwant Singh v. Rao Jagdish Singh*[10]*.This court in that judgment cited with approval the well*

[10] (1968) 2 SCR 203, 208-210: AIR 1968 SC 620

*known passage from the leading Privy Council case of Midnapur Zamindary Company Limited v. Naresh Narayan Roy*[11] *where it has been observed (p. 208):*

> *"In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court."*

**72.** The Hon'ble Supreme Court endorsed the law laid down in **Ram Rattan Vs. State of Uttar Pradesh**[12], in which it was held that although a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing, this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that true owner should dispossess the trespasser by taking recourse to the remedies under the law.

**73.** *Maria Margarida Sequeira Fernandes* (supra) does not support the Appellants. That was a case where the premises in question were given by the Appellant to her brother, the Respondent, as a caretaker. In those circumstances, the Hon'ble Supreme Court held that the Courts were not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in possession for some time either as friend, relative, caretaker or as a servant. Besides, that was also a case where the pleadings were deficient and documentary evidence lacking. Even this decision accepts that due process of law would mean that a person in settled

[11] 51 IA 293, 299: AIR 1924 PC 144: 23 ALJ 76

[12] (1977) 1 SCC 188: 1977 SCC (Cri) 85: (1977) 2 SCR 232

possession will not be dispossessed except by due process of law. In paragraphs 78 to 80 of this decision, the Hon'ble Supreme Court reiterated that no one can take law in his own hands. Even a trespasser in settled possession cannot be dispossessed without recourse to law. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent Court. The "recourse to law" stipulation stands satisfied when a judicial determination is made with regard to the Plaintiff's protective action. The Hon'ble Supreme Court also observed that the Courts, in order to avoid abuse of the process of the law may also record in the injunction order that if the suit is eventually dismissed, the Plaintiff undertakes to pay restitution, actual or realistic costs (para 85).

**74.** Besides, the MCGM's approval or licence dated 4 June 1986, and its conduct after 1986 and up to May 2003 in dealing with the Plaintiff are factors that, at least prima facie, support the Plaintiff's case. The Plaintiff's argument regarding discrimination in terms of the details provided, along with the rejoinder or the impact of the assurances given to the Tenant's association, followed by the directions issued to the MCGM, may also require examination at the final hearing of the suit.

**75.** This is also not some case where the Plaintiff, after failing to make out any prima facie case, is only banking on the alleged weakness in the defendant's case. The Plaintiff has satisfied the triple tests, and even if we were to have viewed some aspects of this matter differently, no case of perversity in

the exercise of discretion by the Learned Single Judge could be said to have been established. At all times, as an Appellate Court reviewing only a discretionary order, we must remain within the jurisdictional parameters explained by the Hon'ble Supreme Court in *Ramakant Choksi (Supra).*

**76.** The MCGM's contention based on the vesting and revesting orders made by the State government has been duly considered in the impugned order. Again, such consideration cannot be said to be vitiated by any perversity. Such issues primarily concern the legal relationship between the Government and the MCGM. Though such an issue may not be altogether irrelevant, its impact will have to be considered at the final hearing of the suit. Based on the contention advanced, surely the MCGM could not have been given a free hand to oust the Plaintiff from the suit plot after almost 25 years without following the due course of law.

**77.** The balance of convenience also supports granting interim relief. The occupants, whose interests one of the Appellants represents, are not being displaced except in accordance with due process of law. Mr Chinoy submitted that the Plaintiff has initiated proceedings before the competent Court only against those occupants who may have defaulted in paying rent or committed other breaches.

**78.** Consistent with the observations made by the Hon'ble Supreme Court in the case of *Maria Margarida Sequeira Fernandes* (supra), we record that if the suit eventually

dismissed, the Plaintiff may be liable to pay the restitution, actual or realistic costs to the affected Defendants in the suit. Even without such specification, it is well-settled that the Court has the power to order such costs, if it is eventually found that the suit warrants dismissal.

**79.** If the Plaintiff is ousted from the suit property without the defendants following due process, it would cause irreparable harm to the Plaintiff, which cannot be remedied solely by monetary compensation. The effect of the impugned order is primarily to preserve the status quo that existed before the MCGM attempted to dispossess the Plaintiff from the suit property by merely affixing a notice of re-entry on the building constructed on the property and drawing out a panachanama. The impugned order does not in any way restrain the MCGM or any other party, entitled in law to do so, from taking legal action to recover possession from the Plaintiff.

## CONCLUSION

**80.** For all the above reasons, we dismiss this appeal. However, we once again clarify that nothing in the impugned order or this order prevents the MCGM or any other party, if so entitled, from taking recourse to the due process of law as against the Plaintiff.

**81.** Further, we clarify that the observations or findings in the impugned order or this order are only prima facie. They should not influence the Court when deciding the suit finally. The

suit should be disposed of in accordance with the law and on its own merits after considering the evidence that the parties might present therein and the law on the subject.

**82.** Both the Appeals and any interim applications therein are disposed of without any order for costs.

**(Advait M. Sethna, J)** **(M.S. Sonak, J)**