

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2664 OF 2010
IN
FIRST APPEAL NO.1268 OF 2010**

The Brihan Mumbai Mahanagarpalika .. Applicant.
Vs.
1A.Sushila Pratap Thakkar & Ors. .. Respondents.

Mr.N.N.Walawalkar, Sr.Advocate i/b J.J.Xavier and Vinod Mahadik for
the applicants.
Mr.N.N.Vaishnaw for the respondents.

**CORAM : D.B.BHOSALE, J.
DATED : 30/09/2010.**

PC:

1. Heard learned counsel for the parties.
2. By this civil application, the applicant-corporation has prayed for stay of the impugned judgment dated 29.3.2010 rendered in L.C.Suit No.4193 of 2010. By this judgment, the City Civil Court has decreed the suit filed by the respondents declaring the action taken by the applicant-corporation of taking forcible possession of the suit premises admeasuring 20 ft. X 40 ft. situated at 144, Ashok Silk Mill Compound, Dharavi Road, Mumbai-70 is illegal and void and further directed the applicants to handover possession of the suit premises to the plaintiff within three months from the date of the order. This court has admitted the appeal and while doing so, in this civil

application granted interim stay on 21.7.2010.

3. I have heard learned counsel for the parties and with their assistance gone through the impugned judgments so also the judgment of the Supreme Court in Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Company Ltd. And Others (1996) 11 Supreme Court Cases 501. City Survey No.503 situate at Dharavi was also subject matter before the Supreme Court in that case. The applicant-corporation claims that City Survey No. 503 situate at Dharavi is acquired for them and they were put in possession thereof long back. Admittedly, the suit plot forms a part of City Survey Plot No.503. It appears that when such submission was advanced before the learned Judge of the City Civil Court, the corporation could not and did not produce on record the aforesaid judgment of the Supreme Court. It would be relevant to reproduce the relevant observations in the impugned judgment for better appreciation of the submissions advanced by learned counsel for the parties. Paragraph 13 of the judgment reads thus:

“13. It is admitted fact that the plaintiffs have filed another Suit No.4194/2003 against the defendant in which they challenged the notice under section 314 in respect of the premises adjacent to the suit premises. In that suit it is the claim of the Corporation that the entire Ashok Silk Mills Compound belongs to MMC, in view of the order of the Hon’ble Supreme Court. Admittedly the suit premises also situated in the same

Ashok Silk Mills Compound. However this defendant has not produced any document or at least order of the Hon'ble Apex Court by which the defendant is claiming ownership of the entire Ashok Silk Mills Compound."

I have perused the judgment of the Supreme Court in aforementioned case. It appears that the City Survey Plot No.503 situate at Dharavi is a large piece of land owned by Provident Investment Co. Ltd. of the Government of Madhya Pradesh. This City Survey Plot No.503 was acquired for the Mumbai Municipal Corporation. It further appears that Madhya Pradesh Government had received the compensation and handed over the possession of City Survey Plot No.503 to the Land Acquisition Officer on 4.3.1983 and that the LAO had taken symbolic possession of the land from Madhya Pradesh Government. Thus, it is clear that the land vested in the Government, free from all encumbrances as provided for under section 16 of the Land Acquisition Act and thus the Corporation, which was put in possession of City Survey Plot No. 503, by the Government, became owner of the said plot. In the circumstances the ad-interim relief granted by this court deserves to be confirmed. Order accordingly. Civil application is disposed of.

(D.B.Bhosale, J.)