

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
APPEAL FROM ORDER NO.1132 OF 2014

Mr. Babul Tapas Sutradhar

... Appellant

V/s.

The Maharashtra Housing and
Area Development Authority Ors.

...Respondents

Mr. Tushar Dahibavkar i/b. Dahibavkar & Co for the Appellant
Mr. V. P. Sawant with Prabhakar Jadhav for the Respondent Nos.1 to 4.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 12, 2015

PC. :

1. Heard. This appeal is preferred by the Plaintiffs challenging the order dated 29/09/2014 passed by the Bombay City Civil Court, Mumbai in draft Notice of Motion in S.C.Suit 2686/2014 (said suit) declining to grant ad-interim relief.

2. The Appellant Plaintiff filed the said suit in Bombay City Civil Court, Mumbai for declaration that the notice dated 15/09/2014 issued by the Maharashtra Housing and Area Development Authority (MHADA) is bad in law, illegal and for quashing and setting aside the same after examining the legality and validity thereof. By notice dated 15/09/2014 the MHADA called upon the tenants occupants of building No.74, Tel Gally, Kalbadevi Road, Mumbai – 400 002 under section 77(a), 78 and 89(7) with section 90(9) of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act) to vacate the said

building as the same is in dilapidated condition and to carry out the structural repairs. In that suit, the Plaintiffs preferred draft Notice of Motion for following reliefs:

“(a) that pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to stay the implementation and operation of the said notice ref No.E.E./C2/3309/2014 dated 15/09/2014 being Exhibit-I.

(b) pending the hearing and final disposal of the present suit, the Defendants, their officers, agents, servants and/or any persons claiming through or under them including the contractor and architect appointed by the Defendants be restrained by an order of injunction of this Hon'ble Court from implementing and/or acting upon the impugned notice ref No.E.E./C2/3309/2014 dated 15/09/2014 being Exhibit-I.

(c) pending the hearing and final disposal of the present suit, the Defendants, their officers, agents, servants and/or any persons claiming through or under them including the contractor and architect appointed by the Defendants be restrained from any manner disturbing and/or interfering with the use, occupation and possession of the Plaintiff in the suit premises viz. Room Nos.17 and 18, 3rd Floor, situate at 74, Tel Gally, Kalbadevi Road, Mumbai – 400 002

(d) For ad-interim and interim relief in terms of prayer (a), (b) and (c) above be granted.

(e) For cost of this Notice of Motion.

(f) For such other and further reliefs as the nature and circumstances of the case may require be granted.”

3. The Trial Court declined to grant ad-interim relief by order dated 29/09/2014. Hence, the present Appeal from Order.

4. The learned counsel for the Appellant submits that they are ready

and willing to vacate the suit premises for carrying out the structural repairs by MHADA, provided, they are provided alternate accommodation. He submits that the Trial Court erred in coming to the conclusion that the Plaintiffs is not entitled to any other accommodation in view of section 51 of the MHADA Act. He submits that in the present proceedings section 51 of the MHADA Act is not applicable at all. He submits that section 51 attracts if any building is acquired by the MHADA for demolition. He submits that in the present proceedings, the MHADA has issued notice under section 77(a), 78 and 89(7) with section 90(9) of the MHADA Act 1976 on the ground that the suit structure is in a dilapidated condition and same required structural repairs. He submits that in these circumstances, section 76(a) and (b) of the MHADA Act 1976 are not applicable which reads thus:

76. Duties relating to repairs and reconstruction of dilapidated buildings : Subject to the provisions of this Chapter, it shall be the duty of the Board -

a) to undertake and carry out structural repairs to buildings in such order of priority as the Board, having regard to the exigencies of the case and availability of resources, considers necessary, without recovering any expenses thereof from the owners or occupiers of such buildings;

b) to provide temporary or alternative accommodation to the occupiers of any such building, when repairs thereto are undertaken, or a building collapses;

5. The learned counsel for the Appellant submits that admittedly, in the present proceedings, the MHADA issued notice dated 15/09/2014 on the ground that the building requires urgent structural repairs as it is in a dilapidated condition. He further submits even as per section 89

and 90 of the MHADA Act, the duty is cast upon the MHADA to provide an alternate accommodation. He submits that these facts are not considered by the Trial Court at the time of passing the impugned order. On the basis of this submission, the learned counsel for the Appellant submits that the impugned order dated 29/09/2014 passed by the Trial Court be set aside directing the MHADA not to take any action against the Appellant pursuant to notice dated 15/09/2014 without providing alternate accommodation.

6. On the other hand, the learned counsel for the Respondent MHADA vehemently opposed the present Appeal from Order. He submits that as per the provisions of section 51 of the MHADA Act, the Plaintiff is not entitled to any alternate accommodation. He submits that even under section 76(b) and 89 of the MHADA Act the MHADA is not bound to provide alternate accommodation to the occupants, if they have alternate accommodation in their possession. He further submits that in the present proceedings the Appellant is occupying the suit premises for their commercial purpose. Hence, in any case, they are not entitled to any alternate accommodation as per the provisions of the MHADA Act. He further submits as per their inspection report, the suit structure is in a dilapidated condition, it may collapse at any time. He submits that if this Hon'ble Court is pleased to restrain the MHADA from taking any action against the Appellant from taking possession of the suit premises, the Appellant may be directed to file an undertaking either before this court or Trial Court stating that they will not hold responsible either the officers of the MHADA or any other authority if any untoward incident happens and they will continue to

occupy the same at their own risk. The learned counsel for the Respondent submits that out of 18 tenants, 16 have already vacated except the Appellant and his brother.

7. Heard both sides at length. It is to be noted that in the present proceedings, the Trial Court has declined to grant ad-interim relief only on the ground that as per the provisions of section 51 of the MHADA Act, the Plaintiff is not entitled to any alternate accommodation. The said finding is not according to law. As per sections 76(b), 89 and 90 MHADA Act the plaintiff is entitled for an alternate accommodation. Considering these facts, I am of the opinion that the impugned order passed by the Trial Court requires to be set aside. Hence, the following order:

- a) The impugned order dated 29/09/2014 passed by the Trial Court in draft Notice of Motion is set aside.
- b) The Trial Court is directed to decide Notice of Motion as early as possible but in any case on or before 31/03/2015 independently without being influenced by this order.
- c) The Respondent MHADA is restrained by an order of injunction from taking any forcible action against the Plaintiff pursuant to the notice dated 15/09/2014 without providing any alternate accommodation till hearing and final disposal of the Notice of Motion in S.C.Suit No.2686/2014.
- d) The Plaintiff to file an affidavit-cum-undertaking in this court stating that he is occupying the suit premises at his own risk and he is not going to hold responsible either the officers of the MHADA or MHADA, if some untoward incident happens.
- e) Office is directed to place the Appeal from Order on board on 18/02/2015 to report compliance i.e. filing of an undertaking by the Appellant.

- f) Appeal from Order stands disposed of accordingly.
- g) In view thereof, Civil Application, if any, does not survive. Same stands dismissed as infructuous.

(K.K. TATED, J.)