

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.157 OF 2015
IN
APPEAL FROM ORDER NO.1122 OF 2010
WITH
CIVIL REVISION APPLICATION NO.900 OF 2010
WITH
WRIT PETITION NO.8142 OF 2010**

M/s. Radhekrishna Developers

...Applicant
(Respondent No.2)

In the matter between
Lalman Kalpnath Singh
alias Kallu Singh

...Appellant

vs.

Ganesh Prasad Kalpnath Singh
alias Pappu Singh & Anr.

...Respondents

Mr. Ashok Kumar Singh for the Applicant.

Mr. P. J. Thorat for the Respondent (Original Appellant in AO).

Mr. Sandesh D. Patel for the Respondent (Original Respondent No.1 in AO).

CORAM : R. M. SAVANT, J.

DATE : 23RD FEBRUARY, 2015.

PC. :-

The above Civil Application has been filed by the Respondent No.2 in the above Appeal From Order and the original Defendant. The relief sought in the above Civil Application are to the following effect:-

“(a) This Court be pleased to direct the Appellant to handover the possession of the suit Shop No.2, Shankar Gawli Chawl No.1, Vakola Masjid, Nehru Road, Santacruz (East), Mumbai-400 055 to the Applicant- Respondent No.2

for demolition.

(b) This Court be pleased to appoint Court Receiver and/or direct Appellant and/or Respondent No.1 to take the possession of the new shop being Shop No.1, "A" Wing, Shankar Dham CHS Ltd., Vakola, Mumbai-400 055 from the Appellant-Respondent No.2 in lieu of Suit Shop."

2] The Applicant in the above Civil Application is the developer who is developing the property in question under Regulation 33(10) of the Development Regulation applicable to Mumbai. It seems that the development in so far as the land wherein the structure in question is situated is complete and the permanent alternate accommodation is ready for allotment, however, in view of the dispute between the original Appellant and the Respondent No.1 that the alternate premises in question cannot be allotted as a result of which the old structure which is existing on site continues to exist and cannot be demolished in view of the orders passed by the Trial Court. The consequence of the same is that there is an impediment for the Applicant to obtain the occupation certificate in view of the old structure remaining on site. The Applicant has, therefore, sought the aforesaid two reliefs which have been extracted hereinabove. The learned counsel appearing on behalf of the Respondent No.1 Shri Sandesh Patil, on instructions of the Respondent No.1, initially submitted that the Court Receiver be put in charge of the permanent alternate accommodation in respect of the

shop in question which is to be allotted as and by way of permanent alternate accommodation. However, the learned counsel on instructions later on fairly conceded that he would leave it to this Court as to how the interest of the Respondent No.1 is to be protected. In view of the fact that the existence of the old structure is causing an impediment to the Applicant in the matter of obtaining occupation certificate, as a result of which, the other occupants of the newly constructed building are also affected. In my view, it would be just and proper if the following directions are issued:-

- 1) The original Appellant i.e. Lalman Kalpnath Singh would handover the possession of the old structure excluding the Tabela to the Applicant within one week from date the Applicant would in turn handover possession of the permanent alternate accommodation i.e. the shop No.1, A Wing, Shankar Dham CHS Ltd., Vakola, Mumbai, simultaneously.
- 2) The original Appellant Lalman Kalpnath Singh would occupy the said Shop No.1, A Wing, Shankar Dham CHS Ltd., Vakola, Mumbai, without prejudice to the rights and contentions of the parties and subject to the result of the above proceedings.
- 3) The Appellant Lalman Kalpnath Singh would file an undertaking in this Court after he is handed over possession to the fact that he undertakes to abide by the decision, that would be rendered in the

above proceedings or in the suit as would be directed.

4) The Civil Application is allowed in the aforesaid terms and to accordingly stand disposed of.

5) List the Appeal From Order, the Civil Revision Application No.900/2010 and Writ Petition No.8142/2010 on **9th March, 2015**.

6) The parties are put to notice that the above proceedings may be finally heard on the said date.

(R. M. SAVANT, J.)