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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1347 OF 2015
IN
SUIT (L) NO. 470 OF 2015

Shabbirbhai Morbiwala & Ors.	...Applicants
<i>In the matter between</i>	
Shabbirbhai Morbiwala & Ors.	...Plaintiffs
<i>Versus</i>	
Maharashtra Housing & Area Development Authority & Ors.	...Defendants

Mr. S.U. Kamdar, Senior Advocate, with Mr. Chirag Kamdar, Mrs. R. Patni, & Ms. Divyanka Kapoor, i/b Wadia Ghandy & Co., for the Plaintiffs.
Mr. P.G. Lad, for Defendant No. 1.
Mr. R.Y. Shirsikar, for Defendant No. 2.
Mr. Hamed Kadiani, i/b Yashpal Jain, for Defendant No. 4
Mr. Mahesh Vishwakarma, for Defendant No. 10.
Defendant Nos. 6 and 7, present in person.

CORAM: G.S. PATEL, J
DATED: 7th May 2015

PC:-

1. The Plaintiffs are the trustees of the Saifee Burhani Upliftment Trust. This is a public charitable Trust. It was formed

in 2009. Its principle objective is the upliftment of the living conditions of over 20,000 residents in Mumbai's densely crowded Bhendi Bazaar Area. The Plaintiffs' project area covers 280 city survey numbers and is spread over 16.5 acres of land. The area in which the Plaintiffs work has long been recognized as one of the most congested in the city. Many of the structures in this area are in dilapidated and dangerous condition and are structurally unsafe. The Plaintiffs have assumed the responsibility of redevelopment of this area under Development Control Regulation 33(9) read with Appendix IIIA of the DC Regulations. This is an urban renewal/cluster redevelopment scheme. At present, neither the viability nor desirability of the scheme as a whole is being questioned. It is not in dispute that the redevelopment of this large area involves the rehabilitation of several thousand residential families and over a thousand commercial or retail businesses.

2. The Plaintiffs' proposal was submitted to the Government of Maharashtra in March 2011 and was accepted in principle later that year, some time around on 22nd July 2011.

3. Following the in-principle approval from the Government of Maharashtra, the Plaintiffs obtained consents from more than 75% of the local residents, occupants and tenants in the area for their redevelopment proposal. They then proceeded to acquire and purchase about 190 (of the planned 250) properties that were privately owned. One of these was City Survey No. 3636, along with the building standing on that plot. This building, i.e., Manzil-E-Fatema, has 18 tenants. Six of these occupy residential premises and twelve are commercial tenants.

4. In the meantime, the 1st Defendant, MHADA, issued a notice to the tenants of Manzil-E-Fatema building (the building in question in this suit) under Section 76 of the MHAD Act on the basis that this building was (and is) in a structurally unsafe, precarious and dangerous condition, and that it was likely to collapse at any time.

5. On 20th August 2011, structural audit certificate was issued by the Structural Engineer in respect of this building. A detailed survey was carried out. It was found that the building was not structurally sound, and, in fact, that it was unsafe.

6. A separate structural audit certificate issued by a MHADA-empowered Engineer followed on 2nd February 2012 to the same effect. Later that month MHADA already prepared a certified list of the tenants/occupants of the building. This list was sent to all the tenants/occupants of the building. On 23rd April 2012 MHADA issued a notice to the Plaintiffs directing them to immediately take safety measures without any delay. That notice was in respect of a number of buildings. The present building, Manzil-E-Fatema, is at Serial No. 22 on that list. On 9th August 2012, MHADA granted permission to the Trust to demolish this building on certain terms and conditions.

7. The Trust has since then written several times to various tenants asking them to vacate their respective premises. The Plaintiffs have asked these tenants to shift to temporary alternate accommodation which is being provided by the Plaintiffs free of cost. The Trust has also offered as an alternative that these tenants

may move to any other accommodation of their choice on rent to be paid for by the Trust. In short, as regards the temporary alternate accommodation, the Plaintiffs, as owners of the buildings, have done everything that would conceivably have been expected of them as regards the temporary alternate accommodation.

8. All this has taken some time. Earlier this year on 27th January 2015, the Municipal Corporation of Greater Mumbai issued a notice to the Trust under Section 354 of the Mumbai Municipal Corporation Act, 1888. A copy of that notice is at page 98, Exhibit “L” to the plaint. This notice in terms states that the building is in ruinous condition and poses a threat not only to its occupants but also to the public and passers-by.

9. It is not in dispute that of the six residential tenants, all but one have vacated their respective premises. They have shifted to the transit (temporary alternate) accommodation. Only Defendant No. 10 remains. Against him there is an eviction decree and there are proceedings that are yet being contested in different Courts. Despite this, the Plaintiffs are willing to offer Defendant No. 10 the same terms, facilities and benefits as have been made available to and accepted by all other tenants, subject to the Plaintiffs’ rights to execute the decree at the conclusion of the pending proceedings. This can hardly be said to be unreasonable. Learned Advocate for Defendant No. 10 attempts a submission that what is being offered to him is unclear and that the terms of the agreement are not to his satisfaction or liking. I will deal with this submission, one that is adopted and repeated in different forms by most of the other opponents to this Notice of Motion, subsequently.

10. As regards the twelve commercial tenants, four have vacated and shifted to the transit accommodation. Defendants Nos. 4, 9 and 10 have refused to give consent to the Trust for redevelopment. The other commercial tenants have done so.

11. The Trust has repeatedly written to various officers of the MHADA and MCGM to take steps to evict the remaining occupants, so that the building can be brought down and the reconstruction project be taken up. MHADA and BMC have not been able to do so because of the lack of cooperation from Defendants Nos. 3 to 11.

12. When this matter was first moved yesterday, Mr. Kamdar, learned Senior Advocate for the Plaintiffs, pointed out that Defendants Nos. 3 to 11 to this suit are not being differentially treated. They are being offered the very same terms as were offered to and accepted by other tenants, including those in this very building, and who have not only accepted these terms but have vacated their respective tenements. One of the grievance made, including by Defendant No. 3, is that there is no concluded agreement regarding permanent alternate accommodation. There is only a draft of the agreement for permanent alternate accommodation attached to the agreement for temporary alternate accommodation. In order to allay all anxiety on this score, I directed the Plaintiffs to file an affidavit placing on record copies of all the temporary alternate accommodation agreements proposed with each one of Defendants Nos. 3 to 11, along with the draft agreements for permanent alternate accommodation. This has been done today. The Affidavit dated 6th May 2015 is taken on record.

13. Mr. Kamdar states that it is not possible at this stage to enter into a concluded agreement for permanent alternate accommodation, simply because this is all subject to relevant permissions being granted by the Planning Authorities. It cannot, however, be, he submits, that the entire redevelopment proposal is held up indefinitely and that the building should continue to pose a threat not only to the occupants, including Defendants Nos. 3 to 11, but also to the passers-by and members of the public.

14. On instructions, Mr. Kamdar agrees that the Plaintiffs' commitment to enter into an agreement for permanent alternate accommodation in terms of the draft attached to the various agreements for temporary alternate accommodation be taken as an undertaking to this Court. I believe that is more than sufficient. This undertaking is accepted. It will bind the Plaintiffs to execute the necessary agreements for permanent alternate accommodation in terms of the drafts annexed to the agreements for temporary alternate accommodation (now annexed to the Affidavit filed today).

15. A grievance is made, particularly by Defendant No. 3, that the alternate premises being given to him are not to his taste and are likely to cause him prejudice since they are not on ground floor but on some other floor. I do not think it is possible in a project of this magnitude to accommodate everyone's preference. What Defendant No. 3 and other Defendants were offered is temporary alternate accommodation, followed by permanent alternate accommodation, on the same terms as have been offered to and accepted by the other tenants/occupants.

16. In the order that I propose to pass, I have kept in mind not only the notices issued by the public authorities and which, at least at this stage, are not challenged by any of the Defendants but also the extremely alarming photographs and condition of the building from pages 51 to 58 of the plaint. These do not show merely a lack of maintenance. There is evidently structural distress. The building stands in an extremely crowded locality. There is foot and vehicular traffic right below the building. A collapse of this building is likely to be catastrophic. In all the submissions that the Defendants make the one thing that they do not say is that any of them are willing to assume the responsibility of the consequences of any such collapse while their personal private needs are being agitated in Court. This is unacceptable. These contesting Defendants cannot pursue their narrow claims to the evident prejudice of the larger public interest.

17. Mr. Kamdar relies on a decision of a Division Bench of this Court in *Municipal Corporation of Greater Mumbai v State of Maharashtra*.¹ Faced with a very similar situation, and one that is increasingly common in these days, in a writ petition brought by the present 2nd Defendant, i.e., the Municipal Corporation of Greater Mumbai, the Division Bench said in paragraph 5:

“5. On one hand, a number of petitions are filed and moved by the landlord/owner of such buildings seeking direction that the Corporation must enforce the notices issued by them under Section 354 of the said Act and evacuate/remove the occupiers and demolish the dangerous and dilapidated building(s) after evicting unwilling tenants/occupiers AND on the other hand, a number of petitions are filed by the occupiers and/or

¹ Writ Petition (L) No. 1135 of 2014, delivered on 23rd June 2014.

tenants of such dangerous and dilapidated buildings seeking to challenge the said notices under Section 354 of the said Act.”

18. Thereafter in paragraph 9, the Division Bench issued a series of guidelines. These guidelines make it clear that where the Corporation finds that a building is indeed in such a dilapidated and dangerous condition, it must follow through on its notices under Section 354 of the Mumbai Municipal Corporation Act, 1888. Guideline (l) says:

“(l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/ property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under Section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/ demolition will not affect the *inter se* rights of owners if there be more than one owner or there is a dispute as to the title of the property.”

19. In addition, the anxiety of the contesting Defendants regarding permanent alternate accommodation is fully addressed by Guideline (p):

“(p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction to redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.”

20. This makes it clear that the requirement of providing permanent alternate accommodation is now a requirement of law. Under Guideline (p) this responsibility is fixed and the Plaintiffs will not be able to obtain a commencement certificate unless there is an agreement of permanent alternate accommodation in the newly constructed building. This fully addresses the concern of Defendants Nos. 3 to 11.

21. This decision binds me. It is not possible to differentiate the case before the Division Bench from the present case.

22. Further in *The Tadeshwar Wadi Cooperative Housing Society Limited V The State of Maharashtra in*,² another Division Bench of our High Court said:

16. ... The existence of power in the Corporation to do so, is coupled with the duty to ensure that the

² Writ Petition No. 2403 of 2012, delivered on 8th February 2013; per Khanwilkar, J., as he then was.

structure in ruins or is likely to fall should be removed with utmost dispatch and the Corporation cannot extricate itself by merely issuing notice to the owner or occupier of such structure or for that matter, inability to remove the structure because of the non-cooperation of either the owner or occupier. ...

18. ... In doing so, the Corporation may have to resort to eviction of the occupants but that drastic action would be of a far lesser degree than the loss or damage to be caused in the neighbourhood on account of sudden collapse of the dilapidated and dangerous building. Indeed, in the unreported decision in *M/s. Whiz Enterprises Pvt. Ltd. (supra)*, the efficacy of these provisions has not been specifically dealt with. ...”

23. These observations apply *proprio vigore* to the present case. The Corporation is required to follow through on its notices. It simply cannot be that the public interest is jeopardised by the continued agitation or obstinacy of individuals concerned. At the cost of repetition, none of Defendants Nos. 3 to 11 have been asked to take anything less than what has been given to other tenants/occupants of this very building. They stand on exactly the same footing. Before me, it seems that what they seek in fact is differential special treatment. This is simply not possible.

24. As regards the area being offered to the tenants of the building in question, MHADA has already certified this by its letter dated 14th February 2012, Exhibit “I” at page 84 of the plaint. This was a letter addressed to each of the tenants. None of the present Defendants seem to have taken any steps to impeach this document either in appeal or in any other proceedings. It is not possible for them to go beyond this document at this stage.

25. As regards the reliefs sought in the Notice of Motion, the Defendants say that granting an ad-interim relief at this stage in terms of prayer clauses (a) and (b) effectively disposes of not only the Notice of Motion, but also possibly the suit itself. That may be correct, but in a given case this may well be inevitable. Given the state of the law, the statements made by the Plaintiffs, their undertakings to the court readily given, and which are *prima facie* not controverted, and the nature of the objections raised by the Defendants, as also the demonstrable larger public interest and the question of safety to the public, I do not see how it is possible to refuse the reliefs sought.

26. It is made clear that notwithstanding the following order, it will be open to any of the Defendants Nos. 3 to 11 to make a suitably worded representation to the Plaintiffs in regard to the nature, size and location of the permanent alternate accommodation. This order is not to be construed as any of these Defendants having accepted any particular permanent alternate accommodation that is now being offered to them.

27. As regards the period of the temporary alternate accommodation, Mr Kamdar makes a statement that the arrangement of temporary alternate accommodation will continue till permanent alternate accommodation is offered and made available by the Plaintiffs. This statement is also accepted as an undertaking to the Court.

28. In view of this, the notice of motion is disposed of with an order in terms of prayer clauses (a) and (b), which reads as follows:

“(a) That pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to pass a temporary order and injunction directing the MCGM as well as MHADA being Defendant Nos. 1 and 2 to forthwith implement, execute and enforce the MHADA Notice dated 18th March 2011 (being Exhibit “F” hereto) issued by the Defendant No. 1 and said 354 Notice dated 27th January 2015 (being Exhibit “L” hereto) issued Defendant No. 2;

(b) That pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to pass a temporary order and injunction directing Defendants Nos. 3 to 11 to forthwith vacate and hand over peaceful possession of their respective premises in the said Building to the Trust for the purpose of redevelopment under Regulation 33(9) of DCR with an undertaking of the Trust that on such redevelopment of the new premises, the Defendant Nos. 3 to 11 will be put back in possession of new premises in accordance with the said Scheme;”

29. For the implementation of this order, Defendants Nos. 1 and 2 shall be entitled, but only if absolutely necessary, to take the assistance of the police authorities concerned. Defendants Nos. 3 to 11 are directed to cooperate with these authorities since their concerns have, I believe, been adequately addressed by the terms of this order and the undertakings given by the Plaintiffs and accepted by the Court.

(G. S. PATEL, J.)