

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2046 OF 2015
IN
SUIT (L) NO. 758 OF 2015

MIG (Bandra) Realtors & Builders Pvt. Ltd. ...Plaintiff
Versus
The Middle Income Group Cooperative Housing ...Defendants
Society Limited & 8 Ors.

Mr. Ravi Kadam, Senior Advocate, with Ms. Jyoti Sinha, i/b M/s.
Negandhi Shah & Himayatullah, for the Plaintiff.
Mr. Hridaya Khurana, i/b LJ Law, for Defendant No. 1.
Mr. Arun Telang, Constituted Attorney of Defendant No. 2.
Mr. Ashok Jain, i/b M/s. A.V. Jain & Associates for Defendant No. 3.
Mr. R.R. Mishra, for Defendant No. 5.
Mr. Sandesh Deshpande, for Defendants Nos. 6, 7 and 8.
Mr. Abhishek Pungalia, for Defendant No. 9.

CORAM: G.S. PATEL, J
DATED: 6th August 2015

PC:-

1. Except Defendant No.2, all the other Defendants are personally present in Court. The 1st Defendant is also represented. After hearing Advocates for the respective parties and Mr. Telang,

the Constituted Attorney of the 2nd Defendant, the following order is passed by consent as the final order disposing of the Notice of Motion at the ad-interim stage.

2. The dispute is with regard to three separate flats in a large redevelopment project of some 19 buildings. Each of these flats has its own distinct factual conspectus. Each flat is dealt with separately, as follows.

3. **FLAT NO. A2/13:**

- (a) This flat was allotted to one Mr. Madhav Palekar by the Housing Board in 1962. He was shown as the original owner of the flat. Defendants Nos. 6 to 8 are Madhav Palekar's sisters. They claim to have contributed to the purchase of that flat and claim to be the owners of that flat. Madhav passed away in 1983. On his death, his shares in the 1st Defendant-Society were transferred to his widow, the 2nd Defendant, represented in Court today by her Constituted Attorney, Mr. Telang.
- (b) The factual position is that Defendants Nos. 6 to 8, Madhav Palekar's three sisters, are in actual physical possession of Flat No. A2/13. Defendant No. 2 resides in Nashik with her son. It appears that a dispute has been filed (No. CC/II/490/2010) before the Hon'ble Cooperative Court No. II by Defendants Nos. 6 to 8 against the Society, the 2nd Defendant, the Plaintiff

and MHADA. In this dispute, Defendants Nos. 6 to 8 claim to be entitled to be shown as the owners of Flat No. A2/13. The pendency of that dispute cannot be allowed to obstruct the completion of the entire redevelopment project.

- (c) Consequently, Defendants Nos. 6 to 8, i.e., the sisters of Madhav Palekar will be entitled to temporary alternative accommodation at the same rate per square foot as is being made available to all other occupants in the 1st Defendant-Society.
- (d) There is also a component of hardship allowance. This is a sizeable amount. It is set out in paragraph 12(a) of the Plaint. The hardship compensation has two components. Part of it is towards corpus and some amount is payable as compensation for temporary alternate accommodation. The corpus component of Rs. 1,21,27,259/- will be deposited by the Plaintiff with the Prothonotary & Senior Master of this Court within four weeks after Defendants Nos. 6 to 8 hand over vacant possession of Flat No. A2/13. The Prothonotary & Senior Master is directed to invest that amount with any Nationalized Bank at an optimum rate of interest initially for a period of one year and to renew it thereafter for like periods till further orders. It is, however, clarified that the withdrawal of this amount with accrued interest will be subject to the orders of the Cooperative Court No. II.

The amount of Rs. 54,69,750/- payable as compensation towards temporary alternative accommodation will be paid against delivery of possession. This payment is to be made by an instrument to be paid to Defendant No. 8 on behalf of Defendants Nos. 6 to 8. The amount of compensation for temporary alternative accommodation is for a period of 39 months.

- (e) Defendants Nos. 6 to 8 will be at liberty to make an application for withdrawal of that corpus component. The Hon'ble Cooperative Court No. II will dispose of that application for withdrawal on its merits, preferably within 10 weeks of the application being filed. The final entitlement to the corpus compensation of Rs. 1,21,27,259/- will be subject to the decision of the Hon'ble Cooperative Court No. II. This order is without prejudice to the rights and contentions of all the parties in the Cooperative Court.
- (f) On account of the pendency of that very dispute, the final allotment of permanent alternate accommodation will be made by the Plaintiff and the 1st Defendant in favour of the Court Receiver, High Court, Bombay. Defendants Nos. 6 to 8 will be put into possession of that permanent alternate accommodation as Agents of the Court Receiver without payment of royalty or compensation. The ultimate allotment of the flat will also await the outcome of the pending dispute No.

CC/II/490/2010 before the Hon'ble Cooperative Court No. II, Mumbai.

4. **FLAT NO. B5/40:**

- (a) This flat and its corresponding shares stand in the name of the 3rd Defendant. The 3rd Defendant is not in possession. He has granted his son permission to occupy the flat. Defendant No. 9 is the 3rd Defendant's daughter-in-law. She has a dispute with her husband, the 3rd Defendant's son. A criminal complaint under the Domestic Violence Act, 2005 has been filed. There is an order dated 26th February 2014 that *inter alia* allows the 3rd Defendant's son to reside in this flat and directs him to provide alternative accommodation to the 9th Defendant and their minor daughter. Till he does so, the 3rd Defendant and his son are restrained from dispossessing the 9th Defendant and her minor daughter from the flat without due process of law. Challenges to this order are pending.
- (b) At present, it is Defendant No. 9 alone who is residing in the flat with her minor daughter. However, this marital dispute cannot possibly be allowed to hold up the entire redevelopment project. The 3rd Defendant and his son reside separately.

- (c) The details of the hardship compensation are set out in paragraph 12(b) at page 21 of the Plaint. The corpus component is Rs.1,10,65,872/-. Part of this has been paid to the 3rd Defendant. The remaining amount of the corpus component of the hardship compensation for Flat No. B5/40 is to be paid to the 3rd Defendant.
- (d) As regards the compensation for temporary alternative accommodation, in my view, since the order of the DV Court has not been complied with but is under challenge, the 9th Defendant will be provided with temporary alternate accommodation for herself and her minor daughter. Therefore, the other component, i.e., compensation for temporary alternate accommodation, in the amount of Rs. 40,77,450/- is to be paid to the 9th Defendant. The compensation for temporary alternative accommodation is computed for a period of 39 months.
- (e) The allotment of the permanent alternate accommodation has already been made in favour of the 3rd Defendant as the owner of that flat. The 9th Defendant is at liberty to obtain any orders in that regard from a Court of competent jurisdiction for providing her a residence as a part of her matrimonial right. However, since it is the 9th Defendant who claims today to be in actual and physical possession of Flat No. B5/40, pending an order of a Court of competent jurisdiction, the actual physical possession

of the permanent alternate accommodation in lieu of Flat No. B5/40 will be given to the Court Receiver, High Court, Bombay, who will put the 9th Defendant in possession of that permanent alternate accommodation as his Agent without payment of any royalty or compensation. The 3rd Defendant will be at liberty to move a Court of competent jurisdiction for being put to an exclusive possession of the permanent alternate accommodation of Flat No. B5/40. That application will be considered only on its own merits. In other words, the possession given by the Court Receiver will be subject to the outcome of the proceedings in which the 3rd Defendant or the 9th Defendant claim to be entitled to that flat.

5. **FLAT NO. D19/164:**

- (a) This flat and its corresponding shares were held in the name of Narottamdas Mevada, since deceased. The 5th Defendant, Narottamdas's son, claims to have a nomination in his favour. He has instituted proceedings before the Deputy Registrar on the basis of that nomination and has obtained an *ex-parte* order on 25th April 2012 directing that he be admitted to membership of the 1st Defendant society. This is under challenge in revisional proceedings.
- (b) At present, the flat is being used in common by the 5th Defendant, his wife and the 4th Defendant, the widow

of Narottamdas Mevada and the 5th Defendant's mother. The 4th Defendant is also personally present in Court.

- (c) The details of hardship compensation for Flat No. D19/164 are set out in paragraph 12(c) at page 22 of the Plaintiff.
- (d) As regards the compensation for temporary alternate accommodation, the amount of Rs. 27,01,725/- will be divided in half and one-half of this amount will be paid separately to the 4th Defendant and the other half to the 5th Defendant. Each payment will be by a separate instrument. It will not be necessary for the 5th Defendant to obtain temporary alternative accommodation for the 4th Defendant. The 4th Defendant has appeared herself before me today. She is visibly distressed and says that she does not want to live in the same temporary accommodation as the 5th Defendant. This order is made to avoid further disputes and acrimonies between 4th and 5th Defendant.
- (e) The corpus compensation of Rs. 92,87,081/- will be divided into two halves. One half will be paid to the 4th Defendant and the other half will be paid to the 5th Defendant. Each payment will be by a separate instrument.

- (f) The final allotment of permanent alternate accommodation will be made in the joint names of the 4th Defendant and the 5th Defendant. This will be subject to the outcome of such proceedings as may be adopted either by the 4th or 5th Defendant. It is, however, clarified that in the final allotment of permanent alternate accommodation the name of the 4th Defendant will be shown first and the name of the 5th Defendant will be shown second.

6. In all these cases, the payment of compensation towards temporary alternative accommodation will be made by Demand Draft against actual handing over of possession. All three flats will be vacated no later than 7th September 2015, or earlier, if possible.

7. The payment or deposit of the corpus component is also to be made by Demand Draft within four weeks of the Plaintiff's obtaining vacant possession of the respective flats.

8. The Notice of Motion to be got registered by tomorrow. This disposes of the Notice of Motion by consent. Liberty to the parties to apply.

9. List the Suit for directions on 8th September 2015.

(G. S. PATEL, J.)

Note: This order is corrected as per order dated 10th August 2015 passed on a praecipe for speaking to the minutes.