

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

**APPEAL FROM ORDER (ST.) NO.1189 OF 2016
along with
CIVIL APPLICATION (ST.) NO.1190 OF 2016
in
APPEAL FROM ORDER (ST.) NO.1189 OF 2016**

Mahendra Bhimrao Kharat & Ors. .. Appellants/Applicants
Vs.
Maharashtra Housing & Area
Development Authority & Ors. .. Respondents

Mr.Altab Khan i/by Shivanand for the appellants/applicants.
Mr.V.P. Sawant a/w Mr.Prabhakar Jadhav for the respondent nos.1 to 3.
Mr.Sanjay Jain a/w Mr.Abhay Parab a/w Mr.Abbas Zaidy i/by M/s.
Zohair & Co. for the respondent no.4.

CORAM : R.D. DHANUKA, J.
DATE : 2nd February 2016

P.C.

. By this appeal from order, the appellants have impugned the order dated 13th January 2016 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellants (original plaintiffs) inter alia praying for an injunction against the Maharashtra Housing & Area Development Authority (MHADA) from implementing the order dated 3rd November 2015 and more particularly the order passed by the defendant no.2 and notices dated 27th November 2015, 30th November 2015 and 2nd December 2015 issued by the defendant no.3 respectively under Section 95A of the Maharashtra Housing & Area Development Authority Act, 1976 (MHADA Act), inter alia calling upon the occupants to vacate their respective suit premises.

2. A perusal of the record indicates that more than 70% occupiers have given their consent for redevelopment under the provisions of the MHADA Act for the purpose of carrying out redevelopment of the property in which suit flats are situated. The action on the part of the MHADA was subject matter of a writ petition filed by the appellants [Writ Petition (L) No.1693 of 2015].

3. By an order dated 8th July 2015 passed by the Division Bench of this Court, this Court recorded a statement made by the learned counsel appearing on behalf of the MHADA that the representations of the appellants (petitioners in the said writ petition) would be considered on merits within four weeks and in accordance with law. This Court accordingly held that the writ petition did not survive and disposed it of. All contentions raised by all the parties were kept open. In the said order, it was clarified by this Court that the said order would not affect on the proceedings which were initiated under Section 95A of the MHADA Act.

4. Learned counsel appearing for the appellants submits that the MHADA did not consider the representations made by the appellants properly and issued the purported notice under Section 95A of the MHADA Act. He submits that there was no proper survey carried out by the MHADA when Annexure-II was prepared. He submits that though the appellants did not raise any objection in the year 2011 when Annexure-II was prepared, the appellants are entitled to raise this objection even at this stage. He submits that if the MHADA is allowed to demolish the suit structures, the appellants will not be able to get alternate

accommodation of the similar measurement. It is submitted that even at this stage, the MHADA shall be directed to carry out survey of the structures in possession of the appellants before evicting the appellants from the suit premises.

5. Learned counsel appearing for the respondent no.4-developer, on the other hand, states that more than 70% of the occupiers have given their consent for redevelopment. He submits that each and every issues raised by the appellants in the representations made by the appellants have been considered by the MHADA while disposing of the representations made by the appellants. He submits that the developer had already agreed to enter into Permanent Alternate Accommodation Agreements with all the occupants who are found eligible for such Permanent Alternate Accommodation and whose names were found in the Annexure-II. He submits that several such occupants have been shifted from the suit premises and thus the appellants cannot refuse to vacate the suit premises.

6. Mr.Sawant, learned counsel appearing for the MHADA submits that the MHADA has properly followed all the procedures and has rightly issued a notice under Section 95A of the MHADA Act after being satisfied that more than 70% occupiers have given their consent for redevelopment and other formalities having been completed. He submits that the appellants also having given their consent for redevelopment cannot be allowed to withdraw their consent in law. He submits that Annexure-II was prepared by the MHADA after giving notice to all the occupants and after video shooting was carried out at the site. The said

procedure was complete in the year 2011 and at this stage, it is not possible to carry out fresh survey. Various steps are already taken pursuant to the proposal made by the developer under the provisions of the MHADA Act read with Development Control Regulations, 1991.

7. I have perused the order dated 13th January 2016 passed by the learned trial Judge and also the records produced before this Court. Learned trial Judge has recorded the statement made by the developer that the developer will enter into Permanent Alternate Accommodation Agreements with the appellants who are found eligible for such alternate accommodation. It is also stated by the learned counsel for the developer that whatsoever benefits are given to the other occupants whose names are found in Annexure-II would be also given to the appellants who are found eligible for such benefits. After completion of these formalities, Society will be formed by the promoters and thus apprehension of the appellants would be taken care of. Statement is accepted.

8. A perusal of the order dated 8th July 2015 passed by the Division Bench makes it clear that though the MHADA had agreed to consider the representation of the appellants on merits and in accordance with law, the said order did not have affect on the proceedings which were initiated under Section 95A of the MHADA Act.

9. In my view, even if the appellants have any grievance in respect of the terms and conditions of the agreements proposed to be entered into by the developer with the appellants, such issues can be canvassed before the learned trial Judge at the time of hearing of the

notice of motion and can be considered by the learned trial Judge. In my prima facie view, since the MHADA was satisfied that the consent of 70% of the occupiers was obtained by the developer, the said order will equally bind the appellants. Several other occupants on the plot are already shifted. If the impugned order is interfered with, large number of other occupants would be seriously affected. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and the same is accordingly dismissed. No order as to costs.

10. It is made clear that the observations made by the learned trial Judge in the impugned order are prima facie. Learned trial Judge shall decide the matter without being influenced by the prima facie observations made in the impugned order.

11. At the request of the learned counsel for the appellants, MHADA shall not dispossess the appellants from the suit premises for a period of two weeks from today. The appellants shall not create any third party rights in respect of the suit premises during the period of these two weeks. It is made clear that no further extension would be granted.

R.D. DHANUKA, J.