

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

APPEAL FROM ORDER (ST.) NO.2471 OF 2016

Shaila Madhukar Gore & Anr. .. Appellants
Vs.
The Maharashtra Housing and
Area Development Authority & Ors. .. Respondents

Mr.Sanjiv Sawant for the appellants.
Ms. Rupali Dixit for the respondent no.1-MHADA.
Mr.S.R. Sonawane for the respondent no.2-MMC.
Mr.K.P.Jain i/by Ms.Sharmila Deshmukh for respondent no.3-developer.

CORAM : R.D. DHANUKA, J.
DATE : 5th February 2016

P.C.

. By this second appeal, the appellants (original plaintiffs) have impugned the order dated 25th August 2015 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellants seeking injunction against the respondents from acting upon the notices issued under Section 95 A of the Maharashtra Housing and Area Development Act, 1976 (MHADA Act).

2. Mr.Sawant, learned counsel appearing for the appellants invited my attention to photographs of the impugned structures and also No Objection Certificate dated 23rd July 2009 issued by the MHADA in favour of the developer and would submit that though there were two separate structures which were numbered as 3 and 3A, the MHADA had illegally clubbed both the structures in one structure for the purpose of allotting one tenement in lieu of two tenements of the appellants. He submits that though in the said No Objection Certificate, it was made

clear that no clubbing of area was permitted, MHADA has illegally clubbed two tenements and as a result thereof, the developer has offered only one tenement in lieu of two tenements as and by way of alternate accommodation. He submits that the appropriate relief in that regard is prayed by the appellants in the suit.

3. Learned counsel appearing for the developer, on the other hand, submits that the MHADA had certified as far back as in the year 2009 that the appellants would be eligible only for one tenement in lieu of two tenements in possession of the appellants and the said order passed by the MHADA is not impugned by the appellants in the year 2009. He submits that in so far as the construction of the building for the purpose of rehabilitation of the occupants is concerned, the developer has already constructed 22 floors to rehabilitate those occupants. He submits that the developer is not able to get electricity connection and occupation certificate in respect of 22 floors in absence of construction which was required to be carried out on the portion of the land on which the structures of the appellants are situated. He submits that except the present appellants, all occupants have already shifted to various alternate accommodation provided by the developer and they are waiting for rehabilitation in the building constructed by the developer.

4. It is submitted by the learned counsel that the appellants have accepted the order passed by the MHADA and as a matter of record requested for temporary permission to occupy the suit structures by their letter dated 15th September 2015 in view of setting up of a Ganpati idol in their premises. MHADA had considered the said request and had permitted the appellants to occupy the suit structures till the Ganpati

Festival was over. Copy of such representation made by the appellants is placed for consideration of this Court.

5. A perusal of the said representation clearly indicates that the appellants had undertaken to vacate the suit premises on or before 30th September 2015 and not to approach any Court. It is also mentioned that the said representation was addressed by them voluntarily.

6. A perusal of the order passed by the learned trial Judge clearly indicates that except the appellants, other occupants have already vacated their premises and the developer is not able to obtain occupation certificate in respect of rehab building and put those occupants in possession. Even if there is any dispute between the appellants and the MHADA or with the developer for allotment of additional tenement or that the MHADA could not club two structures into one while deciding the eligibility of the appellants pending in the suit is concerned, in my view, the appellants cannot be allowed to occupy the suit structures on that ground. The impugned order passed by the learned trial Judge, in my view, is appropriately passed in view of the facts of this case and does not require any interference.

7. Appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

8. It is made clear that whether the appellants are entitled to additional structure or not, this Court has not expressed any views on the said aspect and the same can be decided by the learned trial Judge on

its own merits. The developer had already offered temporary alternate accommodation to the appellants. The appellants are directed to shift to the temporary alternate accommodation provided by the developer.

9. Mr.Jain, learned counsel appearing for the developer, on instructions, states that the compensation which is being paid to other occupants by the developer as on today would also be paid to the appellants in respect of the area of 421 sq. ft carpet area as certified by the MHADA till the appellants are handed over possession for rehab building in accordance with law. Statement is accepted.

10. In view of the statement made by the learned counsel for the developer, the MHADA is directed to implement the notice issued by the MHADA under Section 95-A of the MHADA Act expeditiously and not later than two weeks from today.

11. Parties as well as the authority to act on the authenticated copy of this order.

R.D. DHANUKA, J.