

Sequeira

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

**APPEAL FROM ORDER (St.) NO. 8292 OF 2016
Along with
CIVIL APPLICATION (St.) NO. 8293 OF 2016**

Suresh Shivram Palekar & ors. .. Appellants / Applicants

Versus.

The Municipal Corporation
of Greater Mumbai & ors. .. Respondents

Mr.Uday Warunjikar a/w Mr.Siddesh Pilankar, for the Appellant / Applicant.

Mr.A.V.Diwate, for Respondent Nos.1 & 2-BMC.

Mr.Joel Carlos a/w Ms.Aarti Dandekar, for Respondent No.3.

**CORAM: N.M. JAMDAR, J.
Wednesday, 23 March 2016.**

PC. :

The Appellant challenges the order passed by the City Civil Court, Mumbai dated 10 March 2016 refusing ad-interim relief in draft Notice of Motion taken out by the Appellant in L.C. Suit No.591 of 2016 seeking to restrain the Respondent -Municipal Corporation from demolishing the structure, based on notice issued under Section 353 of Mumbai Municipal Corporation Act, 1888.

2. The learned City Civil Court Judge has noted that out of 42 occupants, 43 occupants have vacated and the Society is in

progress of redevelopment for which they have appointed a developer. The City Civil Court has also noted that the Municipal Corporation has taken steps to cut off water and electricity supply and that the Plaintiff no.1 and 2 are not members of the Society.

3. The learned counsel for the Appellants raised various apprehensions regarding the status of the Appellants during the process of redevelopment and therefore, even though the Appeal arises from notice issued under Section 353, the concern of the Appellants was put to the learned counsel for the Respondent-Society. The learned counsel for the Respondent-Society submitted on record written instructions of the Society as under :

“ 1. Rent after vacating and handing over flat premises for demolishing : Rs.26,500/- per month.

2 Corpus after vacating and handing over flat premises for demolishing Rs.2,00,000/-. Balance Corpus of Rs.8,00,000/- during the progress of work.

3. As permanent alternate accommodation one flat of carpet area 710-720 sqft. carpet area.

In case of Petitioner No.1 Mr. Suresh Palekar, above similar such payment towards Rent & Corpus and the provision of permanent alternate accommodation can be made to the person in whose favour the Court decides the title/ownership dispute of existing flat No.19 between Petitioner No.1 Mr. Suresh Palekar and Mrs. Nirmala Palekar.

In case of Petitioner No.3 Mrs. Rina Chakravaty above similar such payment towards Rent & Corpus and the provision of permanent alternate

accommodation can be made to the person in whose favour the Court decides the title/ownership dispute of existing flat no.21 between Petitioner No.3. Mrs. Rina Chakravaty and Pramod CHS Ltd.”

4. The learned counsel for the Appellants on instructions states that as regards the Petitioner No.1 the first Appeal is pending in the Court at Nasik and orders passed therein are in favour of Appellant-Petitioner No.1. He states that in case of Appellant No.3 a writ petition is pending in this Court wherein orders are in favour of Appellant No.3.

5. Having considered the rival contentions and the fact that the Appellants have sought time of two months, to vacate the premises as the Appellants family members suffer from certain health ailments, the Appeal can be disposed of in the following manner-

a) The Respondent-Society will deposit the corpus as stated in clause (2) as above with the registry of this Court.

b) The Respondent-Society will pay an amount of ₹ 26,500 to each of these Appellants. The Appellants have agreed that this amount will be received by the Appellants subject to rights of the contesting parties in the first Appeal and Writ petition and if any claim is made by the contesting parties in those litigations against the Appellants as regards the right to receive the rent, the Society will be indemnified and the dispute will be only between Appellants and these litigating parties.

c) The Appellants will file an affidavit on or before 31 March 2016 to the above effect including an undertaking that they will also hand over the peaceful possession of the suit Flats to the Respondent-Society. The Affidavit will also indicate the family members residing with the Appellants and that no other person other than the ones named in the Affidavit are residing with them.

d) Two months time is granted to the Appellants to vacate the premises on their furnishing undertaking as above by 31 March 2016.

e) As regards the other contentions of the Appellants, they are kept open to be agitated in the suit.

f) Considering the fact that notice is on the basis that the premises are dilapidated, no further extension would be granted to the Appellants and if the Appellants failed to vacate as per their undertaking then it will be open to the Respondent-Society to take all appropriate steps including help of the law enforcement agencies.

6. The learned counsel for the Respondent-Society expresses an apprehension that grant of two months time for the Appellants is a long period considering the status of the building. Considering the fact that the notice was issued a year back I do not see any immediate apprehension within the two months. In case such immediate apprehension arises liberty to the parties to apply to the

Court.

7. The Appeal is disposed of in above terms. The Civil application is also disposed of accordingly.

(N.M. JAMDAR, J.)