IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 180 OF 2015
IN
NOTICE OF MOTION (L) NO.2041 OF 2013
in
SUIT (L) NO.931 OF 2013

Dr. Aparna Bhau Amrutsagar & Others. .. Appellants.
Vs
Nehru Nagar Shivvaibhav CHS Ltd. & Ors. .. Respondents
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Shri Shishir Joshi along with Shri Vachan Bodke i/b M/s. Chitnis Vaithy & Co for the Appellants.
Shri Tejas Dande along with Shri Bharat Gadhavi i/b M/s. Tejas Dande & Associates for the Respondent No.1.
Shri P.K. Dhakephalkar, Senior Counsel along with Shri Kishor V. Tambe for the Respondent No.2.
Shri Vishal Kanade i/b M/s. U.M. Jhaveri for the Respondent Nos.4, 6, 7 and 8.
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CORAM : A.S. OKA & & G.S.KULKARNI, JJ
DATED : 15TH MARCH 2016

P.C.

1. This Appeal takes an exception to the discretionary equitable order passed by the learned Single Judge on 3rd April 2014 on a Notice of Motion taken out by the Appellants/Plaintiffs.

2. The Appellants/Plaintiffs are four members of the first Respondent Nehru Nagar Shivvaibhav Co-operative Housing Society. There were 40 flats in the building of the first Respondent Society.

According to the case of the Appellants/Plaintiffs, there are 38 members of the first Respondent Society. The Respondent Nos.4 and 6 to 8 are other members who are supporting the Appellants/Plaintiffs. The challenge in the suit is to the Resolution dated 14th July 2013 passed by the General Body of the first Respondent Society by which it was resolved to redevelop the property of the first Respondent Society. The second Respondent/second Defendant was appointed as a Builder and Developer. A declaration is also claimed in the suit that development Agreement and Supplementary Development Agreement entered into between the Developer and the first Respondent Society are null and void. Similar declaration has been claimed in respect of the said General Body Resolution dated 14th July 2013. The second substantive prayer in the suit is for directing the first Respondent Society to hold a fresh bidding calling for bids from the prospective builders and developers for the purposes of redevelopment of the first Respondent Society. The other prayers in the suit are for interim reliefs.

3. A Notice of Motion was taken out by the Appellants/Plaintiffs seeking interim relief pending the suit. The first prayer was for restraining the Municipal Corporation from sanctioning the plans for redevelopment of the property which may be submitted by the first and the second Respondents/Defendants. The second prayer was for restraining the first and the second Respondents from taking

any steps for redevelopment of the property of the first Respondent Society. The third prayer was for restraining the first and the second Respondents from dispossessing the Appellants/Plaintiffs from the suit property. As far as the third prayer is concerned, it is now an admitted position that the building in which the flats allotted to the Appellants/Plaintiffs were situated has been already demolished. As far as the first prayer is concerned, the IOD has been issued by the Municipal Corporation on 30th November 2015 to the first Respondent Society and the plans have been sanctioned.

4. The learned Single Judge dismissed the Notice of Motion by observing that the area of the flats in occupation of the Appellants was 22.63 sq. metres and that the area of 329.40 sq. ft. in the reconstructed building was to be given to each of the Appellants. The learned Judge recorded that the area of the flats held by the Appellants/Plaintiffs works out to 244 sq. ft. By adding 35% of the fungible compensatory FSI (88.40 sq. ft. for each of the Appellants), they would be entitled to an area of 329.40 sq. ft. each in the reconstructed building. Another observation made by the learned Single Judge is that 36 flats out of 40 have already been vacated and there is no water and electricity connection to the building of the first Respondent Society which has been declared as a dangerous building by the Municipal Corporation.

5. In support of the Appeal, various contentions have been raised regarding Resolution passed by the General Body of the first Respondent Society. It is contended that the Resolution is illegal. It is urged that apart from the fact that the agreements entered into between the Developer and the first Respondent Society are illegal, by entering into a Supplementary Agreement, the benefits accrued to each of the Appellants have been reduced. It is contended that a fraud has been played by the first Respondent Society. The learned counsel appearing for the Appellants submitted that considering the availability of 35% fungible compensatory FSI as per the Development Control Regulations for Greater Mumbai, the entitlement of each of the Appellants is to the area of 576 sq. ft. of carpet area in the newly constructed building. The learned senior counsel appearing for the second Respondent states on instructions that as per the sanctioned plan, the premises having an area of 535 sq. ft. of carpet area will be allotted to the Appellants and the Respondent Nos.4 and 6 to 8.

6. We have considered the submissions. Even assuming that a prima facie case is made out by the Appellants/Plaintiffs, it is an admitted position that the building of the first Respondent Society has been demolished. Even going by the case made out by the Appellants, they along with Respondent Nos.4 and 6 to 8 are opposing the

redevelopment which means that at least 29 members of the first Respondent Society are not opposing the redevelopment. As a result of the demolition of the building, the said 29 members are out of possession. As stated earlier, with the passage of time, the prayer clauses (a) and (c) of the Notice of Motion taken out in the suit will not survive as the building plans have been sanctioned and as the building has been demolished. If the drastic prayer (b) of preventing the first and the second Respondents from carrying out redevelopment of the property is granted, the other 29 members of the first Respondent will be seriously prejudiced. Moreover, in the impugned order, the learned Single Judge has recorded that instead of the area of 244 sq. ft. of carpet area in possession of the Appellants, the premises having 329.40 sq. ft of carpet area would be allotted to each of the Appellants. Now, there is a statement made across the bar by the second Respondent that each of the Appellants and the Respondent Nos. 4 and 6 to 8 will be allotted a premises having an area of 535 sq. ft. of carpet area in the redevelopment building. Similar statement is made even by the first Respondent. The aforesaid statements are accepted as an undertakings of the first and second Respondents. In view of the said statements, we direct the first and second Respondents to inform in writing to the Appellants and the Respondent Nos. 4 and 6 to 8 the description of the premises which will be allotted to them in the reconstructed building along with a copy of the typical floor plan. The

premises which will be allotted to the Appellants and the Respondent Nos. 4 and 6 to 8 shall be demarcated on the typical floor plan. The intimation in writing shall be issued to the Appellants and the Respondent Nos. 4 and 6 to 8 within a period of three weeks from today.

7. According to the Appellants, their entitlement is to 576 sq. ft. of carpet area each. This issue raised can be gone into at the time of final hearing of the suit. Suffice it to say that considering the fact that the first and second Respondents have given the aforesaid undertakings to allot carpet area of 535 sq. feet to each of the Appellants and considering the fact that atleast 29 members of the first Respondent will be adversely affected if the interim relief in terms of the prayer clause (b) is granted. They are not the parties to the suit. Hence, this is not a fit case to interfere with the discretionary order made by the learned Single Judge by which the prayer for interim relief has been rejected.

8. By accepting the undertakings of the first and second Respondents and with the above directions to the said Respondents, the Appeal is dismissed.

9. We make it clear that all the contentions of the parties on merits of the suit are kept open. We make it clear that the observations

made by this Court are only tentative observations made for a limited purpose of considering the prayer for interim relief.

10. At this stage, the learned counsel appearing for the Appellants submitted that the amount equivalent to rent for procuring alternate accommodation is not being paid to the Appellants and the Respondent Nos.4 and 6 to 8 and members of the Society by the second Respondent. The learned senior counsel appearing for the second Respondent states that necessary amounts payable as of today will be paid to all the members and in future also the amounts will be paid. We make it clear that it will be open for the Appellants and other members of the first Respondent Society to accept the amounts paid by the second Respondent without prejudice to their rights and contentions in the pending suit.

(G.S.KULKARNI, J) (A.S. OKA, J)