

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.249 OF 2017
IN
CIVIL REVISION APPLICATION NO.314 OF 2017

Sai Datta SRA Co-operative HSG Ltd.,
& Others .. Applicants.

In the matter between

Magnum Developers & Others .. Applicants.
v/s.

Lal Shah Baba Dargah Trust
& Another .. Respondents.

AND
CIVIL REVISION APPLICATION NO.314 OF 2017

Magnum Developers & Others .. Applicants.
v/s.

Lal Shah Baba Dargah Trust
& Another .. Respondents.

Mr. S. U. Kamdar, Sr. Advocate i/b. Chhaya Pandya, for the Applicant.
Mr. G. S. Godbole, with Mr. Ajay Panicker i/b. Ajay Law Associates, for
the Applicants.
Mr. S. A. Khan with Mohd. Soheb i/b. Judicare Law Associates, for the
Respondents.

CORAM: M.S.SANKLECHA, J.

DATE : 18th SEPTEMBER, 2017.

P.C:-

This Civil Application in Civil Revision Application (CRA) has
been moved by 3 Societies of 270 Slum Dwellers, seeking;

- (a) to be added as party-respondent in the CRA or be allowed to intervene in the CRA; and
- (b) pending the disposal of the CRA by this Court, they be given possession of the newly constructed rehabilitation building.

The CRA challenges the order dated 16th February, 2017 passed by the Maharashtra State Board Wakf Tribunal (Wakf Tribunal) .

2 On 24th August, 2017, while adjourning this Civil Application, Applicants were directed to serve the Respondent No.2 – Wakf Tribunal. Mr. Kamdar, learned Senior Counsel appearing for the Applicant in support of the Civil Application states that the services has been done and undertakes to file affidavit of service by 20th September, 2017.

3 Mr. Khan, learned Counsel appearing for the Respondent (Original Plaintiff) who had filed original proceedings i.e. Suit No. 144 of 2014 before the Wakf Tribunal, seeking to restrain the Applicant' in the CRA from developing suit property, has no objection, if the Applicant in this Civil Application are allowed to intervene only in the CRA.

4 This Civil Application is allowed to the extent the Applicants are allowed to intervene in CRA No.314 of 2017.

5 At the request of the parties, CRA No.314 of 2017 is taken up for final disposal in view of the fact that Respondent No.1 (Original Plaintiff) who is supporting the impugned order of the Tribunal, has no objection to the CRA being allowed. This CRA challenges the order dated 16th February, 2017 passed by the Wakf Tribunal. By the impugned order, the application of the Applicants in CRA, seeking a modification of the

earlier order dated 29th June, 2015, granting interim relief, was rejected. By order dated 29th June, 2015, the Tribunal had, inter alia, granted a temporary injunction in favour of the Respondent No.1 (Original Plaintiff), restraining the Applicants in CRA No. 314 of 2017 (Original Defendant Nos. 1 to 7) from transferring and/or handing over possession of flat constructed on the suit property till the determination of the preliminary issue, viz: jurisdiction of the Court.

6 The impugned order dated 16th February, 2017 rejects the Applicant's application made in CRA No. 314 of 2017, seeking a modification of the earlier order dated 29th June, 2015, and permit them to hand over possession of rehabilitation buildings to the slum dwellers. This for the reason that the slum dwellers had been dishoused in view of the construction carried out by the Applicant's in CRA No.314 of 2017 on the suit property. This was originally opposed by Mr. Khan, learned Counsel appearing for Respondent No.1 (Original Plaintiff). However, today Mr. Khan, on instruction states that it is an admitted position that the Applicants in CRA No.314 of 2017 are implementing the Slum Rehabilitation Scheme on the suit plot. Further, slum dwellers had vacated their structures on the suit plot on the Applicants, providing monthly rent and temporary alternate accommodation to the slum dwellers. It is further an admitted position that most of the buildings for rehabilitation of slum dwellers are completed and are ready for being handed over to slum dwellers.

7 In this view of the matter, pending the hearing and final disposal of the determination of preliminary issue in Wakf Suit No. 144 of 2014 presently pending before the Wakf Tribunal, Aurangabad, it is

directed on the consensus arrived at between the contesting parties before me that all the eligible slum dwellers on the slum declared Plots bearing C.S. Nos.10/50, 11/50, 12/50 and 50(part) situated at Tawripada, Lalbaug, Mumbai, shall be rehoused in the permanent alternate accommodation building constructed and/or under construction on the said Plots bearing C.S. Nos.10/50, 11/50, 12/50 and 50(part) subject to the following conditions.

- (a) Handing over of the Rehab tenements in the newly constructed Rehab building to the eligible slum occupants, shall be subject to the Rules, Regulations and Policies framed by the State of Maharashtra and the Slum Rehabilitation Authority (SRA) under the applicable law.
- (b) All the eligible slum dwellers shall execute Undertaking and file the said Undertaking in this Court, before receiving possession of the Rehab tenements. This undertaking is to vacate and hand over the vacant and peaceful possession of their respective tenement in the redeveloped rehab building, in the event any eviction decree is passed against the Defendant No.1 to 7 pursuant to any declaration, if passed by the Wakf Tribunal, that the suit property as claimed in the Wakf Suit No.144 of 2014 is a wakf property, subject to the right to prosecute legal remedies as available under law.
- (c) In addition to the Undertaking of the individual slum dwellers, the Applicant Nos.1 to 7 shall also file their Undertaking in this Court as Developers of the said slum declared plots, before handing over

possession of the Rehab tenements, undertaking to take all legal steps to obtain the vacant and physical possession of all the premises of which physical possession is handed over to the slum dwellers pursuant to this order, in the event any eviction decree is passed against the Applicant Nos. 1 to 7 pursuant to any declaration, if passed by the Wakf Tribunal, that the suit property as claimed in the Wakf Suit No.144 of 2014, is a wakf property, subject to the right to prosecute legal remedies as available under law.

- (d) The Slum occupants who are conditionally allowed to occupy their respective new tenements in the new Rehabilitation building, and the Developers shall not claim any equity and shall comply with the decree of eviction if passed against the Defendant No.1 to 7 and all persons claiming through them, pursuant to any declaration if passed by the Wakf Tribunal, on the Jurisdiction Application under Section 9A of CPC, that the suit property as claimed in the Wakf Suit No.144 of 2014 is a wakf property.

8 The undertaking given by the Slum Dwellers and the Applicant's in the CRA as provided in paragraphs 7(a) and (b) above, are accepted. Parties to file written undertakings i.e. Applicants in CRA No.314 of 2017 and the Applicant's in Civil Application as given above within three weeks from today. As provided herein above, the possession would be given to the Slum Dwellers only on the undertakings being furnished by both the slum dwellers (Applicant's in the Civil Application) and Developers (Applicants in the CRA).

9 For the above stated limited purposes and to the extent indicated above, the impugned order dated 16th February, 2017 passed by the Wakf Tribunal, Maharashtra on the Application at Exhibit 62 in Wakf Suit No.144 of 2014, is hereby modified to allow the slum dwellers to take possession of the Rehab buildings on furnishing of the undertakings by the Applicants in the Civil Application and the CRA, as stated in paragraphs 7(b) & (c) above.

10 **Civil Revision Application** and **Civil Application** therein are **disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)