

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

APPEAL FROM ORDER NO.966 OF 2014

Rajesh Chandrakant Kerkar ... Appellant

Vs.

M/s.Tuli Builders & Ors. ... Respondents

Mr.M.H.A. Sayyid for the Appellant
Mr.Suyash Gadre with Mr.C.R. Mhatre i/b Utangale & Co. for
Respondent Nos.2/SRA

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 14, 2017**

P.C. :

1. This Appeal from Order takes exception to the judgement and order passed by the Bombay City Civil Court, dated 16.9.2011 in S.C. Suit No.2494 of 2007. The plaintiff i.e., the present appellant has filed the suit against the respondents that his eligibility under the SRA scheme is to be declared by the civil Court and also asked that he be given vacant and peaceful possession of one room in the rehabilitation scheme. He also prayed by way of an alternate relief, for a mandatory injunction that his old hut is to be constructed. The trial Court after going through the plaint, has *suo motu* framed issue under Order 7 Rule 8 of the Civil

Procedure Code and held that the civil Court has no jurisdiction to try and entertain the suit.

2. The learned Counsel for the appellant has submitted that the trial Court ought not to have returned the plaint but should have considered that some of the reliefs could have been granted by the civil Court. He submitted that the appellant was in possession of room No.34 and his mother in law was having possession of room No.32. But the Developer has committed a mistake and the SRA also has committed an error in fixing the eligibility of his mother in law and the other person against his room. However, the learned trial Judge has returned the plaint and hence, the said order is to be set aside.

3. Learned Counsel appearing for the Respondent / SRA has submitted that the suit is barred u/s 42 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. He has submitted that the trial Court has considered all the aspects and has passed a correct order.

4. The trial court has *suo motu* framed the issue under Order 7 Rule 8 of the Civil Procedure Code. Considered the prayers in the

original plaint and the amended plaint. The prayers are in respect of deciding the entitlement under the SRA scheme. The declaration of entitlement is the principal prayer and other prayers are ancillary prayers and u/s 42 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971, the suits before the civil Court are barred and there is a Competent Authority to decide the issue of eligibility and of the allotment of the alternate accommodation in the SRA scheme. The learned trial Judge has rightly referred to the judgment in the case of **Tulsiwadi Navnirman Coop. Housing Society Ltd. and anr. v. State of Maharashtra and ors.**¹ and has rightly returned the plaint for presentation of it before the appropriate authority.

5. The impugned order cannot be faulted with and hence, it is confirmed. Appeal from Order is dismissed.

6. At this stage, the learned Counsel for the appellant submitted that the appellant wants to approach the SRA. The plaint was returned under Order 7 Rule 10 of the Civil Procedure Code for presentation before the Appropriate Authority. The said order was challenged by the appellant before this Court. Thus, a

¹ 2007 (6) Mh.L.J. 851

proceeding was pending before this Court and hence, the appellant is given liberty to approach the SRA and the SRA to decide the issue on merits.

7. Appeal from Order is disposed of accordingly.

(MRIDULA BHATKAR, J.)