

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

**APPEAL FROM ORDER (ST.) NO. 12089 OF 2015
WITH
CIVIL APPLICATION (ST.) NO. 12091 OF 2015**

Anil Kamlakar Thakur	...	Appellant
V/s.		
The Municipal Corporation of Greater Mumbai & Ors.	...	Respondents

- Mr.Mayur Khandeparkar a/w. Mr.S.B. Pawar i/b. S.K. Legal Associates for the Appellant.
- Mr.J. Reis, Senior Advocate a/w. Mrs.Madhuri More for the Respondent-Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent-Corporation.

2] This Appeal takes an exception to the order dated 04/04/2015 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.2419 of 2013 filed in L.C. Suit No.2291 of 2013.

3] The said Notice of Motion was taken out by the Appellant herein restraining the Respondent-Corporation from acting in

pursuance of the order dated 16/05/2011 passed by the Officer of the Respondent-Municipal Corporation refusing to split up the tenancy of the Room Nos.8 and 9.

4] As per the case of the Appellant, he is in absolute and independent possession of Room No.8, as a tenant of Respondent-Corporation. He has applied for splitting of the tenancy in respect of Room Nos.8 and 9, as Room No.9 is in possession of his father and it is a separate tenancy. However, his application to that effect came to be dismissed by the Officer of the Corporation vide his order dated 16/05/2011 and now the Corporation intends to demolish the said premises and to have the redevelopment thereon. Therefore, it is prayed that unless and until he is provided with alternate accommodation, the Respondent-Corporation be restrained on acting on the order dated 16/05/2011.

5] The trial Court was, after considering the submissions advanced at bar by learned counsel for both the parties, pleased to hold that the order passed by the Municipal Corporation refusing to split up the tenancy was well justified and therefore, no case was made out to interfere in the said order. Further, the trial Court also found that, if ultimately the Appellant succeeds in proving that, he was entitled to get alternate accommodation by splitting of tenancy, then

the Corporation can be directed to provide such alternate accommodation. But at this stage, when the redevelopment of the said property is obstructed on account of the Appellant, refusing to vacate the premises, no such interim order can be granted in favour of the Appellant.

6] This order of the trial Court is challenged by learned counsel for the Appellant by submitting that the order passed by the Officer of the Municipal Corporation on 16/05/2011 is not giving the valid and sufficient reason, as to, why Appellant's claim for splitting of the tenancy was rejected. It is submitted that, though the Appellant has produced on record the documents *like* Driving Licence, Ration Card etc, none of these documents were considered by the said Officer. Therefore, the order itself is not legal and proper.

7] Secondly, it is submitted that the similar such prayer of splitting of the tenancy made by the other occupants of the same building was accepted by the Competent Authority and hence, there is no justification, as to, why the case of the Appellant is distinguished and differentiated.

8] According to learned counsel for the Appellant therefore, if at this stage, the Appellant's claim is not considered, then after the

redevelopment is completed by the builder, the builder will not be in a position to provide the alternate accommodation to the Appellant. Hence, according to him, there is no substance in the submission made by learned counsel for the Respondent-Corporation that the interest of the Appellant will be very well protected even if, at this stage, the relief is not granted in his favour.

9] Per contra, learned counsel for the Respondent has taken this Court through the various documents filed on record; especially the 'Reply' which is filed by the Respondent to the application of the Appellant showing that the tenancy was very much joint one and it was in the same family of father and son. Hence, the request for splitting up of the tenancy was rightly rejected. No fault can be found therein. It is urged that, the redevelopment of the property cannot be stalled when the claim of the Appellant for splitting of the tenancy is already rejected. Hence, according to him, no case is made out to intervene the impugned order passed by the trial Court.

10] I have considered the submissions advanced by learned counsel for both the parties.

11] It is admitted by the Appellant also that initially Room Nos.8 and 9 situated at ground floor of the said building was standing

in the name of Mr.Hiraji Pandurang Thakur as the principal tenant. After his death, the tenancy of said Room was transferred in the name of his son Mr.Kamlakar Hiraji Thakur and his sister Smt.Ashalata Narayan Patil. Accordingly, the rent receipt of both the Room Nos.8 and 9 was jointly transferred in the name of Mr.Kamlakar Hiraji Thakur and Smt.Ashalata Narayan Patil from 15/06/2004. Thereafter, Smt.Ashalata Narayan Patil has started residing separately on account of her marriage. The Appellant is the son of Mr.Kamlakar Hiraji Thakur and no case is made out to show that he is separated from his father. It is thus the joint tenancy, held by the same family, that is the father and the son.

12] In this respect, reliance can be placed on the Circular dated 16/11/2004 which lays down guidelines for implementing revised policy of splitting up of tenancies in cases of Municipal Tenanted properties. One of the guideline is to the effect that,

“Cases of two different families who are staying in different rooms having independent room numbers, structure numbers registered in the Electoral Roll of 01/01/1995 will only be considered for split up.”

13] In this case, admittedly, the family of the Appellant and his father is one and the same. Merely, because of two different room

numbers are given to the premises in their possession, it does not mean that there are two different tenancies of two different families.

14] Moreover, in the Assessment Extract of the Municipal Corporation also, both the rooms are standing as one or common tenancy.

15] It is also significant to note that, the claim of the Appellant for eligibility to get alternate accommodation, is already rejected in view of the Annexure No.II prepared on 05/04/2003 for redevelopment of the said property.

16] Thus, considering that in the year 2003 itself, the claim of the Appellant was rejected for eligibility and he has filed the application thereafter in the year 2010 for splitting up of tenancy, which is rightly rejected, considering that his tenancy and his father's tenancy cannot be called as two different tenancies of two different families, no fault can be found in the impugned order passed by the trial Court, rejecting the ad-interim relief to the Appellant for restraining Respondent-Corporation from acting in pursuance of the notice dated 16th May, 2011; especially when the Respondent-Corporation is also undertaking to protect the rights of the Appellant, if ultimately he succeeds in the suit, proving that he was entitled for

splitting up tenancy and to have alternate accommodation. But at this stage, to grant the relief of interim injunction to him is as good as restraining the Respondent-Corporation from proceeding with the redevelopment of the said property. As submitted by learned counsel for the Respondent-Corporation except for the Appellant, all the other premises are already vacated. Therefore, there is no other obstruction to the redevelopment of the property. In such situation, at-least by the order of this Court, such redevelopment should not be stalled. Hence, in the limited jurisdiction of this Court, against the discretionary order passed by the trial Court, this Court is not inclined to interfere therein. The Appeal holds no merits, hence stands dismissed.

17] At this stage, learned counsel for the Appellant requests for extention of the order of status-quo, which is passed by this Court in the year 2013.

18] Learned counsel for the Respondent-Corporation strongly resists the said request.

19] In the opinion of this Court also, considering that the redevelopment of the property will be stalled on account of the extention of the order of the status-quo and when already on merits, the Appellant has failed to make out *prima-facie* case, either before the

trial Court or before this Court, such order of status-quo, which was merely an interim arrangement, cannot be extended. Hence, this request stands rejected.

20] In view of disposal of the Appeal, nothing survives in the Civil Application, hence stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]