

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.15257 OF 2018

WITH

CIVIL APPLICATION NO.1294 OF 2018

IN

WRIT PETITION (ST.) NO.15257 OF 2018

Ramniranjan Acchaibar Jaiswar ... Petitioner

Vs.

Ramashre Ramnarayan Jaiswar and others ... Respondents

Mr. R. P. Wagh i/b. Mr. J. Sharma for Petitioner.

Mr. R. N. Shukla i/b. B. N. Shukla & Co. for Respondents No.1 and 2.

Ms Asha Nair i/b. Diamondwala & Co. for Respondent No.6.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 01, 2018

P.C. :

Heard Mr. Wagh, learned Counsel for the petitioner, Mr. Shukla, learned Counsel for the respondents No.1 and 2 and Ms Nair, learned Counsel for the respondent No.6 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.3', has challenged - (i) the judgment and order dated 18.10.2016 passed by the learned Judge, Court Room No.23 of the Court of Small Causes at Mumbai below exhibit-31 in R.A.D. Suit No.1387 of 2011 (for short 'first order') as also (ii) the judgment and order dated 15.03.2017 (for short 'second order') and (iii) the judgment and order dated 24.04.2018 (for short 'third order'), both, passed by the Appellate Bench of the Small Causes Court. By the first order, the learned trial Judge allowed the application filed by the respondents No.1 and 2, hereinafter referred to as 'plaintiffs', seeking possession of alternate accommodation in lieu of room No.4 situate on the ground floor of building No.188A, Bhawani Shankar Road, Dadar

(West), Mumbai 400 028 (for short 'suit premises') and directed respondent No.6, hereinafter referred to as 'defendant No.5', to handover possession of flat No.1703 in newly constructed building known as Belleza to the plaintiffs, without prejudice to the rights and contentions of the defendant No.3 and the learned trial Judge issued other directions. Aggrieved by that decision, defendant No.3 preferred Miscellaneous Civil Appeal. By the second order dated 15.03.2017, the Appellate Court partly allowed the appeal and set aside the directions issued by the trial Court to the extent of handing over possession of flat No.1703 to the plaintiffs. Defendant No.5 is directed to handover possession of the said flat to the plaintiffs and defendant No.3 till the decision on preliminary issue.

3. At the request of Mr. Wagh, leave to delete respondents No.3 to 5 is granted as respondents No.1 and 2 (plaintiffs) and respondent No.6 (defendant No.5) are the only contesting respondents. Amendment shall be carried out forthwith. Rule. Learned Counsel for respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Wagh submitted that defendant No.3 is the tenant in respect of the suit premises. He invited my attention to -

- (i) letter dated 16.06.2009 issued by defendant No.5 calling upon defendant No.3 to clear the arrears of rent;
- (ii) public notice dated 21.06.1996 issued by Special Land Acquisition Officer, Mumbai, Repairs and Reconstructions Board, Bandra (East) where at Sr. No.32, name of defendant No.3 is shown as occupant of the suit premises;

(iii) list of tenants / occupants prepared by Architect and Interior Designer of defendant No.6 where at Sr. No.32, name of defendant No.3 is shown in the column of 'tenant' and in the column of 'occupants' also, his name is shown.

5. He submitted that basically, the redevelopment is undertaken under Development Control Regulation 33(7) of the Development Control Regulations for Greater Mumbai, 1991 (for short 'Regulations'). In view thereof, it was not open to the defendant No.6 to enter into agreement for allotment of permanent alternate accommodation in favour of person other than the tenant. He submitted that the Courts below have not considered the effect of Development Control Regulation 33(7), and therefore, impugned orders deserve to be set aside.

6. On the other hand, Mr. Shukla supported the impugned orders. He submitted that father of defendant No.3 and father of plaintiff No.1 are the real brothers. Plaintiff No.1 is in possession of the suit premises since the time of his birth. The suit premises are jointly acquired by them on tenancy basis. Since the father of defendant No.3 was the eldest, tenancy was in his name. He further submitted that in the modified list of tenants / occupants prepared by MHADA at Sr. No.3, name of tenant is shown as 'Acchaibar N. Jaiswal' and name of occupants is shown as plaintiffs No.1 and 2 and son of defendant No.3-Anil. He submitted that as the plaintiffs are also occupants of the suit premises, the authorities of MHADA rightly have shown them in the column of 'occupants' and defendant No.6 rightly entered into agreement with plaintiffs. He submitted that though defendant No.5 was ready and willing to enter into agreement with the plaintiffs and defendant No.3, defendant No.3 refused to sign the agreement.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is common ground between the parties that defendant No.3 has instituted L.E.Suit for eviction of plaintiffs herein. Plaintiffs have also instituted Suit for declaration of their tenancy rights. Defendant No.3 has instituted Suit in the City Civil Court challenging the list of tenants / occupants prepared by MHADA. Apart from that, defendant No.3 has instituted Suit for declaration of his tenancy rights. Mr. Wagh submitted that the Suits filed by the defendant No.3 in the City Civil Court as well Small Causes Court for declaration of his tenancy rights are withdrawn by him.

8. Thus, it appears that there is dispute between plaintiffs and defendant No.3 as regards tenancy rights qua suit premises and the Suits are pending in the Small Causes Court. It is not in dispute that defendant No.5 has undertaken redevelopment under Development Control Regulation 33(7). A perusal of the impugned orders shows that the Courts below have not adverted to this fact at all. The next question that would be required to be considered is when the redevelopment is undertaken under Development Control Regulation 33(7), whether developer has to enter into agreement for allotment of permanent alternate accommodation with the occupier as contemplated by provisions of MHADA Act or with the tenant as per Development Control Regulation 33(7). As this issue is not adverted to by the Courts below, the impugned orders are liable to be set aside thereby restoring application exhibit-31 for deciding it afresh.

9. Learned Counsel for the parties assure that they will appear before the trial Court on 10.08.2018 and for that purpose, no fresh notice be issued to them.

10. In view thereof, Petition is disposed of in the following terms:
 - a. Impugned orders viz. judgment and order dated 18.10.2016 passed by the trial Court as also the judgments and orders dated 15.03.2017 and 24.04.2018, both, passed by the Appellate Court are quashed and set aside;
 - b. Application exhibit-31 is restored to the file of the learned trial Judge for deciding it afresh;
 - c. The parties will appear before the trial Court on 10.08.2018 and for that purpose, no fresh notice be issued to them. After the appearance of the parties on 10.08.2018, the learned trial Judge will fix the suitable date and proceed to dispose of the application exhibit-31, as expeditiously as possible, and in any case, within 4 weeks from fixing suitable date;
 - d. All contentions of the parties are expressly kept open;
 - e. Rule is made absolute in the aforesaid terms with no order as to costs.

11. In view of the disposal of the main Petition, Civil Application No.1294 of 2018 for stay of the impugned orders does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab