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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1178 OF 2018**

Chaitya Developers and Anr.

... Petitioner

vs.

Maharashtra Housing and Area

... Respondents

Development Authority (MHADA) & 8 Ors.

Mr. Mayur Khandeparkar i/b. Chinmaya Acharya for the Petitioners.

Mr. Himanshu Takke AGP for Respondent no. 6.

Mr. V. P. Kakde i/b. V. P. Sawant for Respondent nos. 1 to 4.

Mr. Sunny Singh for Respondent no. 8.

Ms. Pooja Yadav for MCGM.

CORAM : A.K. MENON, J.

DATE : 30th AUGUST, 2018

P. C.

1. This Writ Petition seeks writ of mandamus against respondent nos. 1 to 4, 7, 8 and 9 invoking powers under Section 95A of the MHADA Act, 1976 and for appointing the Court Receiver to take forcible possession of the premises occupied by respondent nos. 7, 8 and 9 with a direction to hand over the same to the petitioner to enable them to progress on the redevelopment of the property.

2. At the time of hearing of this petition on 5th June, 2018, in view of the fact that respondent nos. 7, 8 and 9 were not represented, notice was directed to be issued to them returnable on 12th June, 2018. On 12th June, 2018 Mr. Singh represented respondent no. 8 and undertook to file vakalatnama on behalf of respondent no. 8. The matter was then adjourned to 3rd July, 2018. On 3rd July,

2018 Advocate for respondent nos. 7 to 9 were not present. Therefore the matter came to be adjourned. It was taken up on 28th August, 2018 when once again respondent no. 8 was represented by Mr. Singh. It transpires that serial number 8 in the array of parties names of two persons are mentioned. On the application of Mr. Khandeparkar amendment was permitted to describe the name of two persons (who are related) as respondent nos. 8a and 8b. This has since been done.

3. Respondent no. 9 in the meanwhile arrived at a settlement with the petitioners and has vacated the premises. Thus the reliefs were restricted to respondent nos. 7, 8a and 8b. Respondent no. 8a also appeared in person on 28th August, 2018 and confirmed that he had arrived at a settlement and had stated that he will be vacating the premises in his occupation. Respondent no. 8a is also present today and confirms that he will be vacating the premises today. Respondent no. 7, 8a and 8b are stated to have consented to the Redevelopment when the MHADA survey was undertaken.

4. Mr. Khandeparkar fairly states that the rent payable to respondent nos. 8a and 8b will be divided between them and paid over upon vacating the premises. In lieu of the premises now occupied by Respondent nos. 8a and 8b they are stated to be entitled to a total area of 485 square feet as permanent alternate accommodation consisting of 425 Square feet of residential space and 60 square feet as commercial space. Respondent no. 8b represented by Mr. Singh had not appeared on 28th August, 2018 and Mr. Singh was instructed that she was unwell. Even today respondent no. 8b is not present in Court but Mr. Singh states on her

behalf after obtaining instructions that she will vacate the premises within one week from today against receipt of the cheque for rent. Mr. Khandeparkar has since handed over to Mr. Singh in Court a cheque for Rs.2,40,000/- representing 12 months rent. As far as respondent no. 8a is concerned the cheques for Rs. 2,40,000/- has also been handed over in the Court today.

5. Mr. Singh on instructions of his clients states that the agreement of permanent alternate accommodation will be executed by respondent no. 8a on or before 5th September, 2018. Mr. Khandeparkar on behalf of the petitioners undertakes to ensure that the agreement is duly executed and registered with the appropriate Sub-Registrar of Assurances. In the circumstances it only leaves respondent no. 7 who is not represented today. Respondent no. 7 was not present when the matter was called today.

6. In the circumstances considering the fact that the premises in question sought to be redeveloped was occupied by 154 structures of which 152 had been vacated as of date with only two persons remaining, respondent nos. 8a and 8b have today agreed to vacate the premises and that leaves only respondent no. 7 who appears to be obstructing the redevelopment process. The record indicates that pursuant to order dated 5th June, 2018, notice was issued to respondent no. 7. Respondent no. 7 was served by hand delivery through registry notice dated 20th June, 2018 at about 5.40 pm. He has acknowledged receipt of the notice dated 21st June, 2018. Pursuant to liberty given to the petitioners' Advocate to serve respondent no. 7 amongst others, it is seen that on 14th June, 2018 respondent no.

7 has been served with petitioner's Advocate's notice dated 13th June, 2018. The Notice mentions that the matter was taken up on 8th June, 2018 and stood adjourned to 3rd July, 2018 for admission. Respondent no. 7 has acknowledged receipt of the notice. Office copy of the letter dated 13th June, 2018 is filed along with affidavit of service of dated 18th June, 2018.

7. It appears that respondent no. 7 is not interested in contesting this petition. It is stated that respondent no. 7 is resident of the said room no. 19 and is available at the premises even today. In view of the fact that the entire process of redevelopment is held up only by apparent lack of co-operation by respondent no. 7 it is appropriate that the Court Receiver, High Court Bombay be appointed as receiver of Room No. 19 occupied by respondent no. 7.

8. Mr. Khandeparkar states that respondent nos. 7, 8a and 8b are required to execute an agreement of permanent alternate accommodation. However since he has stated to be in jointly in possession of R/NR Room No. 5 (R/NR refers to residential and non residential) the agreement is to be executed jointly by Respondent nos. 8a and 8b. Mr. Khandeparkar states that the agreement to be executed by respondent nos. 8a and 8b is in a format that has been executed by the other 154 persons who were occupants of the building. It provides for signatures of respondent no. 8a and 8b. Respondent no. 8a is seen to have affixed his signature and thumb impression on page 25 of the document shown to the Court. It is stated that this very document will now be executed and registered after payment of appropriate stamp duty.

9. Mr. Singh on behalf of respondent no. 8b has been provided copy of this agreement and undertakes on instructions to execute this agreement as and when called upon. In the circumstances it is on the undertaking to vacate the premises that the cheque for rent due to respondent no. 8b for Rs. 2,40,000/- has been handed over to Mr. Singh, Advocate for respondent no. 8b.

10. On behalf of the petitioner the learned counsel undertakes on their behalf that the partners of the petitioner, which is a registered partnership firm, will file a written undertaking in this Court within a period of one week from today undertaking to pay rent in advance from the 13th month to respondent nos. 7, 8a and 8b till they are rehabilitated in the new tenement as an by way of permanent alternate accommodation.

11. Accordingly, I pass the following order :

(i) Court Receiver, High Court Bombay be appointed as receiver of Room No. 19.

(ii) Receiver shall take symbolic possession within a period of one week from today and put the respondent no. 7 on notice that if he does not vacate the premises on or before 12th September, 2018 forcible possession of the premises will be taken.

(iii) Upon respondent no. 7 handing over possession of the premises voluntarily or upon forcible possession being taken, the cheque for rent for a period of 12 months in a sum of Rs. 2,40,000/- which shall be

issued by the petitioners and duly handed over to the Receiver along with this order, will be handed over by the Receiver to respondent no. 7.

(iv) Undertaking of Mr. Singh to execute this agreement as and when called upon is accepted.

(v) All costs, charges and expenses of the Court Receiver shall be borne by the Petitioner. The Receiver shall upon compliance of necessary formalities hand over possession of other tenements to the petitioner.

(vi) All partners of the petitioner shall, within a period of one week from, today file in this Court a written undertaking to pay rent in advance from the 13th month onwards to respondent nos. 7, 8a and 8b till they are rehabilitated in the new tenement as and by way of permanent alternate accommodation.

(vii) All undertakings are accepted.

(viii) All objections in the petition to be complied within one week from today.

(ix) Petition disposed of in the above terms.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

Digitally signed
by Rajeshwari
Ramesh Pillai
Date:
2018.08.31
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