

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

**CIVIL APPLICATION NO.1003 OF 2019
IN
APPEAL FROM ORDER NO.211 OF 2016**

Smt. Shaila M. Gore

And Another

... Applicants

Versus

The Maharashtra Housing And

Area Development Authority

(MHADA) and Others

..... Respondents

.....

Mr. Uday Mahajan a/w Mr. Rohan Karande i/b M/s Divekar & Co. for the Applicant.

Ms. Madhuri More for Respondent No.2-MCGM.

Mr. Kishore Jain a/w Ms. Priyal Chheda and Mr. Vikas Saindane i/b

Ms. Divya Jain for Respondent No.3.

Mr. Siddhartha Shah i/b Siddhartha Shah & Associates for Respondent Nos.4 and 5.

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CORAM : S.C. GUPTE, J.

DATE : 28 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Civil Application is taken out in a disposed of Appeal from Order. The AO challenged an order passed by the Bombay City Civil Court on 25 August 2015. By that order, interim relief was denied to the Appellants/Applicants (original plaintiffs) in respect of an order passed against them under Section 95A of the Maharashtra Housing

and Area Development Act, 1976 ('MHADA Act') and a notice issued to them for vacating the suit premises in pursuance of such order. The appeal was heard by this Court on 5 February 2016. The Court held that the appeal was devoid of merit and dismissed it. Subsequently, papers were produced before the Court and an undertaking was furnished by the Appellants that they would vacate the suit premises and shift to transit accommodation, but that time should be given to them to do so. Accordingly, by consent of the parties, the order of 5 February 2016 was partly modified and the Appellants and their family members were given time to vacate the suit premises. It was made clear that if they did not vacate the suit premises and shift to the transit accommodation offered by the developer on or before the extended date, MHADA could dispossess them with assistance of police. Learned Counsel appearing for the developer submitted that the developer would enter into an agreement for permanent alternative accommodation with the Appellants, after the Appellants handed over possession of the suit premises to the developer on or before the extended date. By the subsequent order, time was again given to the parties to find out transit accommodation. It appears that the Appellants thereafter surrendered the possession of the suit premises and shifted to transit accommodation. They have continued to occupy the alternative accommodation since 2016 till date. The owners of this alternative accommodation, Respondent Nos.4 and 5, however, proceeded to move the Competent Authority for seeking an eviction of the Appellants on the ground that the licence granted in favour of Respondent No.3-developer had expired. That

application has since been allowed and an eviction order has been duly passed by the Competent Authority on 25 July 2019.

3 On that very day, i.e. 25 July 2019, the present Civil Application was moved by the original Appellants. The Appellants prayed for directions to provide them with a suitable alternative accommodation of the same area, that is to say, the area of 576 sq.ft. occupied by them in the present transit accommodation, i.e. the premises owned by Respondent Nos.4 and 5. Respondent No.3-developer has offered such alternative premises at 84, Ardeshir Dady Street, 2nd Floor, C.P. Tank, Mumbai. This accommodation is of 625 sq.ft. Learned Counsel for the Applicants/Appellants, however, submits that this accommodation is not suitable, since it does not have adequate light or air and is on the second floor and in an uninhabitable condition for a long time. Learned Counsel submits that a part of the ceiling of the premises has collapsed and inside beams have been exposed. Learned Counsel for Respondent No.3-developer submits that his client shall get the premises duly repaired and thereafter, offer the same to the Appellants.

4 The photographs relied upon by Respondent No.3-developer do indicate that there is adequate light and air in the premises, which have been offered to the Applicants/Appellants. Insofar as the part of the roof of the premises is concerned, since Respondent No.3 has offered to mend the roof, the Applicants/Appellants may be asked to move into the new premises after the roof is mended.

5 The civil application is, accordingly, disposed of in terms of the following order :-

: O R D E R :

i) Respondent No.3-developer shall forthwith carry out the repairs to the roof of the premises at 84, Ardeshir Dady Street, 2nd Floor, C.P. Tank, Mumbai ;

ii) Immediately after Respondent No.3 notifies the Applicants/Appellants that the roof of the premises has been restored, the Applicants/Appellants would have to move into the premises offered to them. The Applicants/Appellants are, however, permitted to move into new premises, namely, 84, Ardeshir Dady Street, 2nd Floor, C.P. Tank, Mumbai, after the ensuing six days' Ganpati Festival gets over. Accordingly, the Applicants/Appellants are permitted to shift to the new accommodation by **9 September 2019;**

iii) Respondent No.3 shall ensure that the new premises offered to the Applicants/Appellants has water supply and eletricity ;

iv) In the event the Applicants/Appellants fail to vacate the existing premises and shift to the new premises at 84, Ardeshir Dady Street, 2nd Floor, C.P.

Tank, Mumbai by 9 September 2019, Respondent No.3/ MHADA may forcibly remove them from the existing premises with assistance from police. Local police station shall render such assistance for carrying out such eviction as may be necessary.

(S.C. GUPTE, J.)