

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

**APPEAL FROM ORDER NO.173 OF 2019
WITH
CIVIL APPLICATION NO.206 OF 2019
IN
APPEAL FROM ORDER NO.173 OF 2019**

Nalini Bhuvan Co-op. Housing Society Ltd.
& Anr.

...Appellants

V/s.

Mr. Avdhoot Anant Waskar & Anr.

...Respondents

....

Mrs. Anjali N. Helekar, advocate for the appellants.

Shri M.P. Mishra, advocate for the respondent Nos. 1 and 2.

....

CORAM : M.S.KARNIK, J.

DATE : 20th JUNE, 2019

P.C. :

1. Heard learned counsel for appellants and learned counsel for respondents.

2. The appellants are challenging the order dtd.31/10/2018 passed by the Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, dismissing Notice of Motion No.3097/2018 which was taken out by them for appointing a Court Receiver of the Bombay High Court and directing him to take possession of

the suit flat i.e. Flat No. 101 for the purpose of handing over the same to the plaintiff No.1 society for redevelopment by plaintiff No.2.

3. The respondent Nos. 1 and 2 are the occupants and in possession of the flat No.101 in the plaintiff No. 1 co-operative society. The father of the respondents was the original member of the plaintiff No. 1 co-operative society. The appellants want the respondents to hand over the possession of the suit flat to them.

4. As the building is in dilapidated condition, the General Body of the society passed the Resolution on 12/03/2017. Out of 15 members, 14 members have already vacated. It is only the respondents who are obstructing the development. According to the society, the respondent Nos. 1 and 2 are not nominated by their father to succeed him nor have they produced succession certificate so that share certificate can be transferred in their name for admitting them as members. It is for this reason that the respondent Nos. 1 and 2 are refusing to vacate the suit flat.

5. As 14 out of 15 members have already vacated and the

IOD has been issued, the development is completely stalled on account of refusal of respondents to hand over the suit flat, hence the appellants filed the suit.

6. Learned counsel for the respondent Nos. 1 and 2 invited my attention to the order passed by the trial court. He would submit that the development which is carried out is completely contrary to the Circular issued by the State of Maharashtra in the year 2009 which is mandatory in nature. He would submit that the trial court has given reasons as to in what manner the Circular has not been complied. He would further submit that no procedure is followed in selecting the developer and that even the general body meeting which was conducted was completely contrary to the provisions of law. He further pointed out that there was no quorum available in the general body meeting which vitiated the Resolution. For all these reasons, learned counsel for the respondents would submit that the impugned order passed by the trial court does not need any interference.

7. It is not in dispute that flat No.101 is in possession of the

respondents and they claim to be the successors of the original member Anant Pandurang Waskar, who expired on 29/12/2014. It is just that the society contends that Late Anant left no nomination in respect of the flat.

8. The society wants the respondent Nos. 1 and 2 to submit succession certificate. Be that as it may, it is not in dispute that even the respondents are not residing in the suit flat and they have shifted to another premises as building is dilapidated. The keys of the flat are with the respondents. The respondent Nos. 1 and 2 are refusing to handover the keys of the suit flat to the society or the developer for the purpose of redevelopment.

9. It is the contention of the respondents that the Resolution passed is contrary to the provisions of the Circular and even the development is contrary to the directives of 2009. If at all the respondents want to challenge the development, they have to resort to appropriate proceedings challenging development. However, in a suit filed by the plaintiffs for a direction directing the respondents to hand over the possession, especially when 14 out of 15 members have already vacated the suit premises and

even as the respondents are now not residing in the suit flat, the trial court should not have relied upon the Circular while refusing the relief to the appellants.

10. Admittedly, the building is completely vacated except that the premises viz., suit flat of the respondents is locked and they have not handed over the possession. The building is in a dilapidated condition which is not disputed. The Resolution of the society and the development agreement is not under challenge. In these circumstances, there was no impediment for the trial court to have allowed the notice of motion filed by the Society by protecting the interest of the respondents as well.

11. The impugned order passed by the trial court therefore deserves to be set aside. The present Appeal From Order deserves to succeed on the following terms :-

(i) The Court Receiver, Bombay High Court is appointed to take over possession of the suit flat, viz., flat No. 101 on the first floor, admeasuring about 600 sq. ft. carpet in the building known as Nalini Bhuvan Co-operative Housing Society Limited, situated at D. N. Mhatre Road, Sainath Nagar, Eksar, Borivali

(West), Mumbai 400 103, for the purpose of handing over the same to the plaintiff No. 2 for redevelopment of plaintiff No. 1.

(ii) Learned counsel for appellants has filed the Undertaking duly signed by the Chairman of the Society and also signed by Jitendra K. Thakur, partner of the appellant No. 2 who are present in the court. The Undertaking is taken on record and accepted and marked as 'X' for identification. The signatories to the Undertaking submit that they would abide by whatever is stated in the Undertaking.

(iii) The Court Receiver to take possession of the suit flat within a period of two weeks from completion of formalities by appellants. The same be handed over to the appellant No. 2 forthwith or within a period of one week from the date of taking possession. The respondents may also co-operate in handing over the suit flat to the Court Receiver and they are permitted to remove the articles from the suit flat within a period of one week from today. If the respondents do not co-operate, the Court Receiver is permitted to break open the lock and take forcible possession with the help of police. The articles in the flat

be handed over to the respondents.

(iv) The appellants undertake to deposit a sum of Rs.15,000/- with the Court Receiver and lodge papers and proceedings within a period of one week from the date the amount is deposited with the Court Receiver. The Court Receiver to stand discharged after the possession is handed over to the Appellants. The appellants undertake to make the balance payment, if any, to the Court Receiver.

(v) Upon redevelopment of the building, the flat which is allotted against flat No.101 and as per Undertaking be handed over to the respondents in terms of the Undertaking filed by the plaintiffs.

12. At this stage, learned counsel for the respondents prays that this order may be stayed for a period of 8 weeks. This prayer is rejected.

13. Parties to act on an authenticated copy of this order.

14. The Appeal is allowed. Impugned order is set aside. The Notice of Motion No.3097/2018 stands allowed in the above terms.

15. In view of disposal of the Appeal, nothing survives in the Civil Application. Civil Application is disposed of accordingly.

(M.S.KARNIK, J.)