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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2315 OF 2015
WITH
NOTICE OF MOTION NO.94 OF 2017
IN
WRIT PETITION NO.2315 OF 2015**

Shreeniwas Cotton Mills Ltd. ... Petitioner

V/s.

Maharashtra Housing and Area
Development Authority and ors ... Respondents

- Ms. Prachi Dhanani i/by Veritas Legal, for the Petitioner.
- Mr. Vikrant Parashurami with Mr. Vaibhav Parshurami, for Respondent No. 1 and 2.
- Ms. Avani Mankar i/by Jitendra Shukla, for respondent No.3.
- Mr. O.S. Kapagi with Mr. Vinodkumar Mishra, for Respondent No.4.

CORAM : G. S. KULKARNI, J.

DATE : 14th FEBRUARY, 2019.

P.C. :

1] Heard Ms. Prachi Dhanani, learned counsel for the petitioner, Mr. Vikrant Parashurami, learned counsel for respondent Nos. 1 & 2, Ms. Avanti Mankar, learned counsel for respondent No.3 and Mr. O.S. Kapagi, learned counsel for respondent No.4.

2] This petition was filed at a stage when the petitioner was undertaking redevelopment of the property bearing C.S.No.444/, 1/444, Lower Parel Division, Building No.43, 43A, 43AB, 45, 45/A, 45/B, Gowalia Chawl Lane, Shankarrao Naram Marg, Lower Parel known as Shriniwas Mills Chawl, Mumbai- 400 013. The petitioner had moved an application dated 2.7.2014, to the Chief Officer of respondent No.1, requesting for action to be taken against respondent Nos. 3 and 4 to evict them from the premises earlier held by them, by taking recourse to section 95A of the Maharashtra Housing Area Development Act, 1976, (for short, "MHADA Act").

3] In pursuance of the said application as made by the petitioner, the Chief Officer of the MHADA, by his letter dated 30th September, 2014, addressed to the Executive engineer G-south Sub Division, directed him to inspect the properties and on being fully satisfied with the arrangements made by the developer/ owners for temporary alternate accommodation and on verifying that there is no litigation and injunction of any Court and on verification of the approved plans I.O.D. etc., initiate action under section 95A of the MHADA Act, to evict certain tenants which included respondent Nos. 3 and 4.

4] It appears that *inter-se* between respondent Nos. 3 and 4 there were disputes as to who is actually tenant in respect of pre-redevelopment premises (room No.4). Also proceedings in this regard bearing R. A.D. Appeal No.22 of 2012, were pending before the Appellate Bench of the Small Causes at Mumbai.

5) When this petition was heard for admission on 23rd April, 2015, this court while admitting the petition, by way of interim relief passed the following order:-

"By way of interim relief, the following order is passed by consent:-

i) The petitioner has agreed to pay to Respondent No.3 sum of Rs.17,000/- (Rupees Seventeen thousand only) per month for a period of 24 (twenty four) months on or before 27 April 2015 aggregating to a sum of Rs.4,08,000/-(Rupees Four Lac Eight thousand only), as and by way of compensation in lieu of the temporary alternate accommodation to be provided by the Petitioner and an additional sum of Rs.10,000/-(Rupees Ten Thousand only) as a one time payment towards shifting charges.

ii) The Petitioner has also agreed to pay to Respondent No.4 an aggregate sum of Rs.51,000/-(Rupees Fifty one thousand only) on or before 27 April 2015 which comprises of a sum of Rs.8,500/- (Rupees Eight thousand five hundred only), for a period of six months and an additional sum of Rs.5,000/-(Rupees Five thousand only), as a one time payment towards

shifting charges.

iii) In view of the aforesaid, Respondent Nos. 3 and 4 have agreed and undertaken to immediately and no later than 27 April 2015 hand over quiet, vacant and peaceful possession of the subject premises Shree Niwas Mill Chawl on receipt of the aforesaid amounts set out in Clauses 1 and 2 above and remove themselves and their family members and belongings from the said property as defined in the petition.

iv) The Court of Small Causes at Bombay to hear and finally dispose of Appeal No.22 of 2012, which is presently pending, as expeditiously as possible and preferably within a period of four months from the date hereof. The respondent Nos. 3 and 4 shall bring the present order to the notice of the Court of Small Causes (Appellate bench) at Bombay at the earliest.

v) In the event that Respondent No.4 succeeds in the Appeal before the Court of Small Causes at Bombay or any further proceedings in respect thereof, the Petitioner will not be liable to make any payment whatsoever to Respondent No.3. In these circumstances, Respondent No.3 hereby gives an undertaking to this Court to reimburse Respondent No.4 with the monthly rent which has been paid to Respondent No.3 ;by the Petitioner in terms of paragraph 1 hereto. Upon the final adjudication of the disputes between Respondent No.3 and Respondent No.4, Petitioner shall enter into a Permanent Alternate Accommodation Agreement in lieu of the existing premises i.e. Room No.24 of Shree Niwas Mill Chawl as per the format entered into by the Petitioner with the tenants/occupants of other 132 premises in the said Shree Niwas Mill Chawl, with the successful party for allotment of a premises admeasuring 363 square feet (carpet area) in the rehab building being constructed on a portion of the said

property.

vi) Respondent Nos. 3 and 4 do hereby undertake to execute any other document that may be required by the concerned authorities in connection with the development work on the said property and shall at all times extend their fullest co-operation in that regard.

vii) Parties are at liberty to apply for modification of this order after disposal of the Appeal in Small Causes Court".

6] It is not in dispute that interim arrangement made in pursuance of the above interim order was acted upon accordingly, the pre-redevelopment premises came to be vacated and possession of the same was handed over to the petitioner for the purpose of redevelopment. It is not in dispute that today the redevelopment is completed, in lieu of the pre-redevelopment premise flat No.103 on the first floor of Rehab Building, is kept vacant and is in possession of the petitioner to be allotted to the rightful allottee. It is at this stage, respondent No.4 has moved Notice of Motion No.94 of 2017, seeking reliefs that respondent No.1 hold an enquiry and declare that respondent No.4 is eligible member for permanent alternate accommodation, in lieu of the old (pre-redevelopment) premises. The following are the prayers as made in the Notice of Motion.

"a) The Hon'ble Court be pleased to direct the petitioner and

respondent No.1 to hold up the enquiry and declare the respondent No.4 being eligible member to provide permanent alternate accommodation to the respondent No.4 in lieu of the old premises i.e. room No.24, Chawl No.43(A), Shree Niwas Cotton Mill Chawl, S.N. Path, Hanuman Lane, Lower Parel, Mumbai 13.

b) The Hon'ble Court be pleased to direct the respondent No.1 and /or their officer and /or any person through them to execute the necessary document in respect of provide permanent alternative accommodation to the respondent No.4 in newly constructed building by the petitioner therein.

c) The Hon'ble Court be pleased to pass the order and direct the petitioner and the respondent No.1 to hand over possession of alternative accommodation in newly constructed building by the petitioner in lieu of old premises i.e. room No.24, Chawl No.43,(A), Shree Niwas Cotton Mill Chawl, S.N. Path, hanuman Lane, Lower Parel Mumbai -13 to the respondent No.4, pending the hearing and final disposal of the present notice of Motion.

d) The Hon'ble Court be pleased to direct the petitioner and/or their officer and/or any person through them to pay monthly compensation of Rs.17,000/- per month to the respondent No.4 for temporary accommodation till provide permanent alternative accommodation in lieu of the old premises pending the hearing and final disposal of this present notice of motion.

7] This Court (R.G. Ketkar, J.), considering above Notice of Motion filed by respondent No.4, in the order dated 12th July, 2017 observed that the Small Causes Court has disposed of R.A.D. Appeal No.22 of 2012, which was partly allowed, modifying the trial Court's order to the extent of dismissing R.A.D. Suit No.1309 of 1998, filed by

respondent No.3 and rejecting the Counter Claim set up by respondent No.4. It is also observed that both the parties are before this Court in a challenge to the said orders in Writ Petition No.4563 of 2016 (A.S.). It is observed that by an order dated 14th December, 2016, the said Writ Petition was admitted by this Court. However, being confronted with the interim arrangement, which can prevail on the redevelopment being complete and till the said Writ Petition (A.S.), is decided, the Court, was of the opinion that it would be appropriate that respondent Nos. 3 and 4 submit a bid before the Officer of Respondent No.1, to which these contesting respondents also agreed, so that amongst respondent Nos. 3 and 4 whoever offers a higher bid, can be put in possession of the redevelopment premises pending final decision in W.P. No.4563 of 2016. It would be appropriate to note the observations/directions of the court as recorded in paragraph No.6 to 8 of the said order which reads thus :-

"6. Aggrieved by this order, defendant No.5, respondent No.4 herein preferred R.A.D. Appeal No.22 of 2012. By order dated 7th March, 2016 Appellate bench of Small Causes Court partly allowed the appeal by modifying the order to the extent of dismissing the R.A.D. Suit filed by respondent No.3 and rejecting counter claim set up by respondent No.5. Aggrieved by this decision, respondent No.3 has instituted Writ Petition No.4653 of 2016, in this Court. By order dated 14th December, 2016, this Court admitted the Writ Petition by issuing Rule. It

was clarified that in case respondent No.6 [petitioner herein] executes an agreement in favour of the petitioner [respondent No.3], same shall be subject to the further order passed in that petition.

7. Mr. Shukla states that respondent No.3 is present in the Court. He has tendered photo copy of Identity Card of respondent No.3 which is taken on record and marked 'A' for identification. Mr. Mishra states that respondent No.4 is present in the Court. He has tendered photo copy of his Identity Card which is taken on record and marked 'B' for identification.

8. Upon taking instructions from respondent Nos. 3 and 4, their Counsel submits that they are agreeable to submit bid before officer deputed by respondent No.1. Mr. Teju Singh Pawar, Joint Chief Officer, M.B.R. & R. Board, in presence of representative of the petitioner and respondent No.3 and 4 submit bid in respect of Flat No.103, first floor in the rehab building. Respondent Nos. 3 and 4 as also representative of the petitioner agree that they will appear before Mr. Teju Singh Pawar on 19th July, 2017 after 12.00 noon during office hours. Officer of M.B.R & R Board, MHADA shall conduct the bidding and shall accept higher offer given by respondent Nos. 3 or 4 and submit the report to this Court so that further orders can be passed"

8] In pursuance of the above directions of this Court, the Joint Chief Officer, Repair and Reconstruction Board, Mumbai Shri. Teju Singh Pawar, (sealed bids) has submitted in a sealed cover the bids as made on behalf of respondent Nos. 3 and 4. Mr. Teju Singh

Pawar has also placed his report before this Court in a sealed cover, as addressed to the Prothonotary and Senior Master, of this Court. The perusal of this report dated 21.7.2017 indicates that Respondent No.3 Shri. Suraj Bansraj Rajbhar has made a bid to pay Rs.13,500/- per month and respondent No.4 Shri. Bhikari Jokhan Rajbhar has submitted a bid of Rs.7,000/- per month. The report of Mr. Teju Singh Pawar, alongwith the annexures, is taken on record and marked "X" for identification.

9] This is how, today, the proceedings stand before the Court. On the above backdrop, I have heard learned counsel for the parties. A perusal of the prayers as made in this Writ Petition and considering the order dated 23.4.2015, passed by this Court, and subsequent orders passed in the Notice of Motion as noted above, in my considered opinion, no useful purpose would be achieved to keep this Writ Petition pending, inasmuch as, the purpose of the petition is already worked out. This for the reason that the redevelopment is already complete. This apart, by a detailed order dated 12.7.2017, passed in the above Notice of Motion, this Court had directed respondent Nos.3 and 4 to submit their bids for the interim arrangement pending the Writ Petition arising from the Small Cause Court proceedings, in which the issue as to whether respondent Nos.

3 or respondent No. 4 or none of them are tenants of the pre-development premises, would be decided. As on the date, the said Writ Petition is pending adjudication. The rights of the disputing parties respondent Nos. 3 and 4 are, thus, yet to be adjudicated.

10] It is also to be noted that there is no third party claiming any right in the premises as constructed in lieu of room No.4, as it stood prior to development and in case if both parties are not successful in establishing their claim that they were the tenants in respect of the tenement in question, then obviously it would be for the MHADA to decide as to how the tenement is required to be dealt.

11] Considering the above clear position, now at this stage the petitioner is no more interested in any action of eviction to be taken either against respondent No.3 or respondent No.4 for which this petition was filed for, taking recourse under Section 95A of the MHADA Act. Hence, the further adjudication of this petition, in these circumstances, is not called for. I, therefore, propose to dispose of the Writ Petition as also the pending Notices of Motion, by the following order.

Order

- i) The Petitioner and/or respondent No.1 MHADA are

directed to put respondent No.3 Shri. Kailash Suraj Bansraj Rajbhar, in possession of flat No.103 on the first floor of Rehab Building, pending adjudication and final disposal of Writ Petition No.4653 of 2016.

ii) Respondent No.3 shall be put in possession subject to respondent No.3 depositing Rs.13,500/- as occupation charges per month which shall be deposited with the respondent No.1 MHADA on or before 5th day of every month. In case of any default in payment of these charges, it would be open for respondent No.1 to take appropriate action to evict respondent No.3. In that event, if respondent No.4 makes an appropriate claim to have the premises on the same terms and conditions as offered by respondent No.3, respondent No.1 shall allot the said premises to respondent No.4, by evicting respondent No.3.

iii) The occupation and possession of respondent No.3 shall be subject to the outcome of the decision in Writ Petition No.4563 of 2016 (A.S.) and this order shall not create any other rights of occupation or possession of the suit premises in respondent No.3 or respondent No.4, if in the event he comes into possession.

iv) In the event respondent No.3 does not succeed in Writ Petition No.4563 of 2016, filed by respondent No.3, respondent No.3 shall hand over vacant and peaceful possession of flat No.103 to the MHADA within 15 days from the date of said order of this Court, to MHADA.

v) Needless to observe that in case, respondent No.4 succeeds, it would be open for respondent No.4 to approach MHADA to seek possession of the flat in question.

v) The petition is accordingly disposed of, keeping open all the rights and contentions of respondent Nos. 3 and 4 to be adjudicated in the pending Writ Petition No.4563 of 2016 (A.S.)

vi) Needless to observe that this Court in disposing of this petition, has not gone into the merits of the rights of the petitioner, to assert any other legal right in respect of tenant in question.

13] Writ Petition and Notice of Motion No.94 of 2015, are disposed of in the above terms. No costs.

[G. S. KULKARNI, J]