

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION (L) NO. 1123 OF 2018
IN
SUIT (L) NO. 616 OF 2018**

Chandrashekar Sawant and Ors. ... Plaintiffs

Versus

Govind Kabra Badricha and Ors. ... Defendants

Mr. Sujit Lahoti i/b. Mr. Parth Shah for the Plaintiffs.

Mr.Raj Patel i/b. Dileep Satale for Defendant No. 1.

Mr.R.M.Vasudeo i/b. Mr.A.V. Chougule for Defendant No. 2.

Dr.Saikumar Pathrudu M. for Defendant No. 6.

Ms.Supriya Gurav a/w. Mr.Jainish Jain for Defendant No. 7.

Ms.Hema Chhabra i/b. Maniar Srivastava Associates for Defendant No. 9.

Mr.Rohan Cama a/w. Mr.Anirudh Hariani, Mr.Trupti Shetty, Mr.Sarah Thanawala
i/b. Dhruve Liladhar and Company for Defendant Nos. 10 - 26 and 28 - 53.

Mr.Sachin M. Bandkar for Defendant Nos. 8, 55, 56 and 61.

Ms.Minal Jaiwant Chandnani for the Applicant in NMSL No. 49 of 2019.

CORAM : S. J. KATHAWALLA, J.

DATED : 14TH FEBRUARY, 2019

P.C. :

The following order is passed by consent of parties.

1. The Plaintiffs and Defendant Nos. 1 to 64 (except Defendant Nos. 3, 4, 27, 54 to 57 and 62) had signed and tendered Consent Terms which are taken on record and marked as 'A'.

2. Pursuant to the Order of this Court dated 27th November, 2018, Defendant No.1 has voluntarily signed the Consent Terms, in the presence of an officer of this Court after the same was explained to him in Gujarati.

3. At the request of the parties, it is recorded that the earlier Consent Terms dated 9th January, 2010 in Suit No. 391 of 2009 are valid, binding and subsisting between the parties thereto in so far as the same are not inconsistent with the present Order or the above Consent Terms marked as 'A'. It is clarified at the request and by the consent of the parties that in the event of any inconsistency between the present the Order or the Consent Terms marked as 'A' on one hand and the Consent Terms dated 9th January, 2010 (or Agreement for Permanent Accommodation being part thereof) on the other hand, the present Minutes of the Order and/or Consent Terms marked as 'A' shall prevail.

4. Parties have agreed before me that the tripartite agreement to be executed by Defendant Nos. 1 and 2 with the respective parties to the Consent Terms marked as 'A' shall be in line with the Agreement forming part of the Consent Terms dated 9th January, 2010 in Suit No. 391 of 2009.

5. By consent of parties and particularly Defendant Nos. 1, 59 and 60, it is directed that the lines *“The Defendant No. 59 and 60 have filed a Contempt Petition being (L) No. 19311 of 2018 in this Hon’ble Court. The Defendant Nos. 59 and 60 undertake that on receiving a sum of Rs. 44,000/- each from the Defendant Nos. 1 and*

2 and upon execution and registration of the Permanent Alternate Accommodation Agreement as per the terms above, they shall forthwith make an application to withdraw the above Contempt Petition; in the meantime, it is agreed that subject to strict compliance with these Consent Terms, Defendant Nos. 59 and 60 shall not press the Contempt Proceedings.” in clause 14 of the Consent Terms, stand deleted.

6. Plaintiff No.3 has expired and the legal heirs are not on record. The Advocate for the Plaintiffs states, on instructions, that the Plaintiff No.3's legal heirs have asked that Mrs. Sunita Prakash Desai be permitted to take possession, in lieu of Plaintiff No.3. This is permitted to be done and Mrs. Sunita Prakash Desai is permitted to sign the Consent Terms and the terms of the Consent Terms shall be read as if signed by all the legal heirs of Plaintiff No.3 so far as it relates to late Plaintiff No.3. Mrs. Sunita Prakash Desai is joined as Plaintiff No.3 in place of Mr. Shyamrao Daynu Desai. The Advocates for the Plaintiffs shall forthwith serve this Order on the other legal heirs of Plaintiff No.3 and if they have any objection they shall be at liberty to move this Court within 30 days from service failing which it shall be deemed that they have no objection. In the event of any objection being raised against Mrs. Sunita Prakash Desai, who is present before the Court, Mrs. Sunita Prakash Desai has agreed that she shall indemnify the objector(s) to the extent of any loss suffered by them as may be ordered by the Court.

7. Plaintiff No.7 is one of the legal heirs of one Mr. Savalram Pawar who is

the certified tenant in the M.H.A.D.A list. The said Mr. Savalram Pawar has expired. There are inter-se disputes between the legal heirs of Mr. Savalram Pawar and a suit is filed in respect thereof in the City Civil Court at Bombay bearing Suit No. 1132 of 2017, which is pending. Admittedly, possession has been taken from Plaintiff No.7. He is residing in the transit accommodation of MHADA. I am informed by the Advocates for Plaintiff No.7 and the Advocates for the Defendant Nos.1 and 2 that the brother of Plaintiff No.7 has not claimed any rent or transit accommodation from MHADA, Defendant No. 1 or Defendant No. 2. Therefore, possession of the premises be handed over to the Plaintiff No.7 subject to the final outcome of or further orders in Suit No. 1132 of 2017 which is pending between the parties. Plaintiff No. 7 undertakes to vacate the premises being allotted to him if so directed by orders passed by the competent Court. If any application is taken out for additional reliefs, the same shall be disposed off within 8 weeks. In the meantime, Plaintiff No. 7 undertakes that he shall refrain from selling, transferring, assigning, licensing, conveying, alienating or creating any third party rights or parting with possession in respect of this Flat, until further orders of the competent Court. The execution of the Agreement for permanent alternate accommodation shall be subject to the outcome of the aforesaid litigation, and Defendant Nos. 1 and 2 undertake to execute the same with the party succeeding in the above litigation.

8. After signing of the Consent Terms, Defendant Nos. 8 and 61 have expressed their disinclination to abide by the Consent Terms. In view of the objection

of a limited few Defendants including Defendant Nos. 8 and 61 , the entire process of obtaining the NOC from MHADA cannot be delayed due to such disputes, since it affects the majority of the tenants as also delays the process of obtaining the Occupation Certificate from the Municipal Corporation. Hence, subject to further Orders of this Court or of MHADA or any other Competent Court, the Court Receiver, High Court Bombay is appointed as Receiver in respect of Flat Nos. 504 and 502(part) which were allotted to Defendant Nos, 8 and 61 respectively as this will protect the interests of the Defendant Nos. 8 and 61 so that the flat is not encumbered. If any applications for relief or otherwise are pending or made before any court, forum or authority pertaining to the issues referred to in this order, the concerned court, forum or authority is requested to dispose off the same expeditiously or in any event within 6 weeks. The taking over of possession of these flats and those set out below shall be treated by MHADA and all other authorities as compliance of the handing over of possession by the landlord in respect of the flats of the respective tenants.

9. Defendant No. 27 claims a commercial premises in the rehab building and not a residential premises. The Defendant No.27 has received possession of commercial premises being No. 202 in the rehab building and the Defendant No.1 confirms the same. In view thereof, the Plaintiffs withdraw the Suit against the Defendant No.27.

10. Defendant Nos. 24 and 47 are not claiming any rights to flats, being

relatives of Defendant No.1. As agreed, Defendant Nos. 24,47 and 53 are deleted from the title of the Suit.

11. Defendant No.1 claims that Defendant Nos. 28, 62 and 63 were commercial tenants who have now received flats in the residential building. Defendant No.1 claims he is entitled to receive certain amounts from Defendant Nos. 28, 62 and 63 for allotting the residential flat in lieu of commercial premises. Defendant No. 28 disputes that any amount is due and payable to the Defendant No.1 and submits that the agreement executed with him by the Defendant No.1 does not provide for any payment to be given to the Defendant No.1. These issues are to be decided by any appropriate forum, should proceedings be filed by any of these Defendants, which will be decided on their own merits in accordance with law. Defendant No. 62 though served has not appeared before this Court and has not signed the Consent Terms. The Consent Order and the Consent Terms can only benefit the Defendant No.62, and he shall be given possession on the same terms as the other tenants/occupants. Although he has not signed the Consent Terms, he may be permitted to do so subsequently if he so desires.

12. In respect of Defendant Nos. 54 & 57, there are Decrees of eviction passed against them in Suit No. 942 of 2004, and Appeal No. 115 of 2007 along with Cross Objection No. 20 of 2012 respectively. Defendant Nos. 54 and 57 are at liberty to file appropriate proceedings before the concerned Court/ Forum seeking stay of

Execution Applications. All rights and contentions of the Defendant Nos. 1, 54 and 57 are kept open. The concerned Court/ Forum is requested to pass appropriate orders, including if felt appropriate, as to possession, within 8 weeks from the date of filing of such appropriate proceedings. In the meantime, and subject to further orders (interim or final) in proceedings filed by Defendant Nos. 54 and/or 57 challenging the Decrees, the Court Receiver, High Court, Bombay is appointed as Receiver of the Flats of these Defendants as per the list 'X', on the above terms. The Court Receiver, High Court Bombay shall handover possession of these flats to the concerned party subject to further orders in the proceedings between the said parties. Defendant Nos. 1, 54 and 57 have no objection to the above direction.

13. Defendant No.1 claims that Defendant Nos. 55 and 56, are jointly entitled to only one flat. However, they are claiming 1 flat each. According to MHADA they are entitled to only 1 flat. A representation filed by Defendant No. 55 dated 24.07.2018 is pending before MHADA. MHADA shall decide the same within 8 weeks from today, uninfluenced by the Consent Terms. Without delving into the controversy as there is only one flat shown in MHADA's certified list, subject to any further developments/proceedings/orders, possession of Flat No. 503 is to be handed over to the Court Receiver on the same terms as above subject to the resolution of the above claims.

14. The Defendant Nos. 59 and 60 have an inter-se dispute with Defendant

No.1 regarding the area of the flats being allotted to them by the Defendant No.1. Defendant No.1 claims that the area to be allotted to Defendant Nos. 59 and 60 is 300 sq. ft. each. Whereas, Defendant Nos. 59 and 60 claim that they are entitled to the allotment of a flat admeasuring 360 sq. ft. each. Defendant Nos.1, 59 and 60 have, as recorded in the Order dated 05/11/2018, agreed and undertaken to leave this issue to be decided by this Court and have also agreed and undertaken to abide by the decision of this Court in this regard. In the meantime, subject to any further orders, possession of Flat Nos. 703 and 704 is to be handed over to the Court Receiver on the same terms as above, subject to resolution of these issues. Defendant Nos. 1 and 2 undertake to execute the agreements for permanent alternate accommodation in accordance with the above decision of the Court.

15. The Plaintiffs and certain Defendants submit that Defendant No.1 is liable to pay to them rent for the months of June, July and August, 2018 in terms of the Order dated 20th August, 2018 passed by this Court and also for the months of September and October, 2018. Defendant No.1 disputes the same on the ground that possession has already been handed over to some tenants and therefore there is no question of paying rent to them. The parties have agreed and undertaken to leave this issue to the Court and have agreed and undertaken to abide by the decision of the Court in this regard.

16. M.H.A.D.A is directed to accept the contents of this Order and the

correctness of the list marked as “X” to the Consent Terms, read with letter dated 12th November, 2018 as satisfaction of the tenants in full, as regards receipt of possession of flats from the landlord for the purpose of issuance of its NOC. M.H.A.D.A shall issue its NOC for the rehabilitation building within 15 days from the date of this order, in accordance with law.

17. The M.C.G.M shall thereafter process and issue the Occupation Certificate for the rehabilitation building within 15 days from the date of intimation of receipt of the NOC from M.H.A.D.A, in accordance with law.

18. All parties shall co-operate and take all necessary steps to ensure the MHADA NOC and OC are obtained.

19. B.E.S.T. and other statutory and/or local authorities are expected to act upon this order and forthwith restore and / or grant electricity connection, water supply and such other utilities to the occupants of the rehabilitation building.

20. The undertakings recorded herein are accepted.

21. Liberty to apply.

22. The Suit stands decreed in terms of the Consent Terms read with this order, and all Notices of Motion therein stand disposed of, save and except to the extent necessitated to decide the issues kept for decision of this Court.

23. Refund of Court Fees, as per rules.
24. List on 28th February, 2019 to report compliance.

(S.J.KATHAWALLA, J.)