

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

**CIVIL APPLICATION NO.3899 OF 2019
IN
FIRST APPEAL NO.1209 OF 2011
ALONG WITH
FIRST APPEAL NO.1209 OF 2011**

Shaila Marutirao Naik .. Applicant

In the matter between

Ashok Rupani .. Appellant

Vs.

Shaila Marutirao Naik & Ors. .. Respondents

Mr.Prabhanjan Gujar for the applicant/orig.respondent no.1.

Mr.Anoshak Daver a/w Ms.Madhuri Nalluri and Mr.Pratik Amin for the
orig. Appellant.

Mr.S.P. Thorat for the respondent no.2-MHADA.

CORAM : R.D.DHANUKA, J.

DATE : 24th February 2020

P.C.:

. By this civil application, the applicant (original respondent no.1 in the First Appeal) seeks appointment of Court Receiver in respect of the suit premises and for other reliefs.

2. The applicant had filed a suit before the City Civil Court, Bombay inter alia praying for declaration and mandatory injunction.

3. By an judgment and decree dated 27th April 2011 passed by the Bombay City Civil Court, suit filed by the applicant came to be

decreed. Allotment of the premises in favour of the original appellant by MHADA came to be declared as bad in law and set aside. The Trial Court also directed to the MHADA to make allotment of suit premises in the name of the applicant/original plaintiff. First Appeal filed by the appellant is already admitted.

4. There is no dispute that the suit premises is likely to be demolished pursuant to the proposal for re-development made by the respondent no.4-M/s.Tejakaya Corp. The apprehension of the applicant is that the appellant may take possession of the premises offered by the respondent no.4 and transfer the exclusive rights in the suit premises.

5. Mr.Daver, learned counsel for the original appellant, on instructions, states that he will hand over possession of the existing premises to the respondent no.4 for the purpose of redevelopment and would enter into an agreement for permanent alternate accommodation on the terms and conditions agreed upon between the appellant and the respondent no.4. He states that all the payment that would be received by his client from the respondent no.1 or any other developer in respect of the suit premises and the agreement entered into between his client and the respondent no.4 or any other developer would be without prejudice to the rights and contentions of all the parties and subject to the outcome of the First Appeal filed by his client. Statement is accepted.

6. In view of the statement made by the learned counsel for the appellant, the appellant is permitted to hand over vacant possession of the suit premises to the respondent no.4 or any other developer after entering into an agreement for permanent alternate accommodation and to receive amounts under the said agreement, if any, subject to the outcome of the First Appeal and without prejudice to the rights and contentions of both the parties.

7. The appellant is also entitled to occupy transit camp, if any, offered by the developer during the pendency of the First Appeal. The appellant would continue to deposit a sum of Rs.5,000/- per month directed to be deposited by an order dated 1st December 2011 in Civil Application No.2264 of 2011 with First Appeal No.1209 of 2011 passed by this Court annexed at page 13 to the civil application without fail.

8. The appellant shall also pay all outgoings, if any, in respect of the suit premises. Such payment will also be without prejudice to the rights and contentions of both the parties and subject to outcome of the First Appeal. The appellant shall furnish a copy of such agreement for permanent alternate accommodation that would be entered into by the appellant with the developer to the applicant's advocate within two weeks from the date of entering into such agreement.

9. Civil application is disposed of on aforesaid terms. No order as to costs. Hearing of the First Appeal is expedited.

R.D.DHANUKA, J.