

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

**INTERIM APPLICATION NO.2854 OF 2022
IN
FIRST APPEAL NO.738 OF 2004**

Mrs. Rosely Xavier ...Applicant

Versus

Municipal Corporation of Greater
Mumbai and Ors. ...Respondents

...

Mr. Aasif Patel i/b. Ms Swati Sawant for the Applicant.
Mr. Ruchir L. Tolat i/b. M/s. L.C. Tolat and Co. for Respondent No.6.
Mr. Uday Banu Singh with Mr. Ivor Peter D'souza and Ms Sejal Raval
for Respondent Nos.2(a), 2(b), 3 and 4 in FA/738/2004 and for
Respondent Nos.1(a), 1(b), 2 and 3 in IA/2854/2022.
Mr. Om Suryavanshi for MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st AUGUST, 2022.

P. C. :-

1. The Appellant has sought modification of order dated 19/07/2004 passed in Civil Application No.1865 of 2004. A perusal of the said order reveals that while disposing of the Civil Application No.2364 of 2002, an order was passed restraining the Appellant from creating any third party interests or parting with possession in respect of the suit premises in favour of any third party. Subsequently, apprehension was expressed that the Appellant may claim premises in

the redeveloped property by excluding other legal representatives of original tenant. Hence, by order dated 19/07/2004 this Court directed the Appellant not to enter into any agreement or transaction as regards the redeveloped property in which suit premises are situated, without seeking permission of this Court.

2. Contempt Petition No.249 of 2008 was filed alleging that despite the said order the Appellant had entered into an agreement in respect of the suit premises with Respondent No.6-Developer. Considering the fact that the Appellant herein had not parted with the suit premises and made a statement in her additional affidavit that she had not entered into any agreement or that she had not transacted in respect of the suit premises in any manner, the petition was disposed of.

3. Mr. Patel, learned counsel for the Applicant states that the IOD has been issued for the purpose of redevelopment and the Appellant is required to vacate the premises and enter into an agreement with the Developer as regards the temporary transit accommodation and permanent alternative accommodation. Mr. Patel, under instructions from the Applicant, who is present in the Court

makes a statement that the Applicant shall not transfer, alienate or create third party rights in respect of permanent alternative accommodation without prior permission of the Court or pending disposal of the appeal. Statement is accepted as an undertaking to the Court.

4. Leave is granted to the Applicant to vacate the premises and hand over possession of the suit premises to the Respondent No.6 - Developer subject to the condition that the agreement in respect of the permanent alternate accommodation shall contain a clause that allotment of permanent alternate accommodation in favour of the Appellant shall be subject to the final outcome of the appeal and further that the Appellant shall not transfer, alienate or create third party rights in respect of permanent alternate accommodation during the pendency of the of appeal, without prior permission of the Court

5. Interim application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)