

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

**APPEAL FROM ORDER NO. 183 OF 2022
WITH
INTERIM APPLICATION NO. 1202 OF 2022
IN
APPEAL FROM ORDER NO. 183 OF 2022**

Walibai @ Valibai Trikam Jogadiya
v/s.

.... Appellant

The Municipal Corporation of
Greater Mumbai and ors.

.... Respondents

Ms. Babita P. Pandey for the Appellant.
Mr. R. Sirsikar for MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2022.

P. C. :-

. The Appellant herein has challenged the order dated 17/11/2021 dismissing the Notice of Motion filed by the Appellant in LC Suit No.2107/2021.

2. Heard Ms. Babita Pandey, learned counsel for the Appellant and Mr. Sirsikar, learned counsel for MCGM. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Appellant (hereinafter referred to as 'the plaintiff') claims to

be an employee of Respondent No.1 – Corporation. She claims that her father-in-law, mother-in-law and husband-in-law were also working with Corporation. They were residing in staff quarters allotted by the Corporation. She claims that in the year 2016, the Defendant No.4 who is her nephew threw her and her children out of the suit premises. The suit premises were demolished in the year 2015 and new structure has been constructed. The plaintiff claims that the Respondent No.1 has no right in respect of the suit premises. She therefore filed the Notice of Motion seeking the following interim reliefs :-

(a) That pending the hearing and final disposal of the suit the Defendants, their servants, agents and any other persons, claiming through them be restrained by an order of permanent/temporary injunction from not to create third party rights in newly constructed flat no.1203 in B2 in lieu of the staff tenement.

(b) That the Hon'ble Court be pleased to restrain the Defendant No.1, 2 and 3 by a permanent/temporary injunction in favour of Plaintiff to handover the allotment papers, possession papers and key of flat in newly constructed building to Defendant No.4 on behalf of Plaintiff in lieu of her staff tenement allotted to the Plaintiff's name ;

(c) For a permanent/temporary order and

injunction of this Hon'ble Court restraining the Defendant No.4 from in any manner entering into, remaining in, using and occupying the said staff allotted tenement being Plaintiff's tenement in flat no.1203 in B2 allotted in lieu of B.M.C. Colony no.4, Room no.6, Tulsiwadi, B.R. Marg, Tardeo, Mumbai – 400 034 in any manner whatsoever ;

4. It is not in dispute that the suit premises were demolished in the year 2015 and that the Respondent No.4 was in possession of the suit premises as on the date the suit premises were demolished. Learned counsel for the Respondent – Corporation states that the newly constructed premises have already been handed over to the Respondent No.4 and that presently he is occupying the said premises. This statement is not disputed by the learned counsel for the Appellant. He states that the possession of the premises was handed over to the Respondent No.4 even before filing of the suit. Under the circumstances, prayer clauses (b) and (c) cannot be entertained. There is nothing on record to indicate that the Respondent No.4 intends to or that he has attempted to alienate the premises or create third party rights in respect of the suit premises.

5. Under the circumstances, the learned Judge was justified in

rejecting the Notice of Motion. The question whether the Appellant is the principal tenant and is entitled to be put in possession of the suit premises will be determined in the suit. No interference is warranted at this stage. Appeal stands dismissed. Pending applications, if any, stands dismissed in view of dismissal of the Appeal.

**PREETI
H JAYANI**

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(SMT. ANUJA PRABHUDESSAI, J.)