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

**APPEAL FROM ORDER NO.313 OF 2022
WITH
INTERIM APPLICATION NO.2245 OF 2022**

Sachin Gangadhar Nair and ors. ..Appellants
vs.

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

Mr. Altaf Khan a/w Ms. Supriya Ghadge i/b. Mr. Khan Fayzan
for appellants.

Mr. Atul Damle, Senior Advocate a/w Mr. Sagar Kursija for
respondent no.5.

Mr. R. Y. Sirsikar for respondent-MCGM.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 11, 2022.

P.C. :

- 1.** Heard learned counsel for the parties.
- 2.** The appellants are the original plaintiffs. The challenge in this Appeal From Order is to an order dated February 23, 2022 passed by the trial Court rejecting the notice of motion taken out by the plaintiffs for interim injunction. The suit was filed by the plaintiffs for the relief of mandatory injunction for directions to the defendant-MHADA and the

Corporation to execute the directions in the letter dated July 2, 2016 by forcefully breaking open the Room Nos.1, 2, 3, 15 and 16 and to remove the unauthorized wall obstructing the Ground Floor passage and to maintain these rooms by doing the necessary structural repairs and for directions to MHADA and MCGM to decide the representation dated March 18, 2020, August 25, 2020 and October 3, 2020. Further directions are prayed for.

3. Briefly stated it is the case of the plaintiffs that the defendant no.5-present respondent no.5 is the owner of the Plot comprising of C.S. No.479, 480 and 481. The plaintiffs are tenants in respect of the building which is situated in Plot 'A' which according to the plaintiffs is illegally demarcated by the respondent no.5. The defendant no.5-the owner wanted to develop Plot 'B'. According to the plaintiffs the proposal was made by the owner for development on the entire C.S. No.479, 480 and 481. The building of the plaintiffs which is a ground plus one storied structure is also a part of C.S. No.480. Learned counsel for the appellants-plaintiffs was at pains to point out that

though the structure in which the plaintiffs are residing is situated in one plot comprising of C.S. No.479, 480 and 481, the owner with a view to utilize the FSI of the entire plot and also take advantage of the setback area has illegally divided the entire plot into Plot 'A' and Plot 'B'. My attention is invited to the findings recorded by the trial Court. In the submission of learned counsel for the appellants, as a result of the development that is being carried out in respect of Plot 'B', taking advantage of the setback area in respect of Plot 'A', if later the development is to take place in respect of the building of the plaintiffs, they will be left with hardly any FSI and open space for constructing the building. The building of the plaintiffs is in a dilapidated condition. Learned counsel submitted that the development should be undertaken by the owner simultaneously, also in respect of the building in which the plaintiffs are residing as tenants. Though the owner disputed the tenancy rights of the plaintiffs, it is an admitted position that the plaintiffs are residing in the building which is situated on the plot which is demarcated

as Plot 'A'.

4. I have gone through the impugned order and the stand taken by the owner in the affidavit-in-reply filed before the trial Court. I have heard Mr. Damle, learned Senior Advocate for respondent no.5.

5. In my opinion, at this stage, there is no reason for the plaintiffs to be apprehensive. Most of the arguments of the learned counsel for the appellants is based on an apprehension that in future the plaintiffs may face problems when the building in which they are residing is redeveloped as they will be left with no FSI in view of the stand taken by the owner about the setback area. Suffice it to observe that in view of the stand taken by the owner in the reply filed before the trial Court, the plaintiffs apprehension is not well founded.

6. A reference to some of the portions of the affidavit-in-reply in paragraphs 5, 6, 8, 9 and 12 need to be made. The owner (respondent no.5) has categorically stated that the setback area which is under the existing structure will be cleared only when the defendant no.5 goes for

redevelopment of Plot A. The same cannot be cleared and handed over to the Corporation since it is tenanted and all other un-encroached portion of the setback which is already merged with the existing road will be formally handed over to the Corporation from the total setback area and the setback encroached by the existing structure will be handed over only when the tenants of the existing structure on Plot A are settled and the structure is fully vacated and that the setback area of Plot A will be handed over when defendant no.5 commences redevelopment of Plot A. Further the owner has denied that the FSI of Plot A is being utilised for redevelopment of Plot B and categorical stand is taken that Plots A and B will be developed independently on the basis of their respective potential which is as per the plans, as of now 1.33 FSI which is the zonal FSI. Again in paragraph 8 it is stated that the owner is reserving his full right to claim FSI benefits of setback area of Plot B only and the setback area of Plot A will be kept intact and will be handed over at the time of redevelopment of Plot A as and when the tenants of the existing structure/suit building are settled

and the same is vacated as per the Architect's letter submitted to the MCGM on October 1, 2019 on the MCGM portal. Then in paragraph 12 it is stated that the plaintiffs are in fact in no way adversely affected by the proposed development of the property comprising of sub-divided plots being Plot A and Plot B which have been sub-divided by taking into account the basic zonal FSI of 1.33 on each sub-divided plot as per DCPR 2034. It is his stand that the Plots A and B have been cordoned off by a compound wall and the entrance of the said two plots are separate and hence the plaintiffs by no stretch of imagination can be put to inconvenience while the development of Plot B is being carried out by the owner in respect of the Plot B.

7. I have also gone through the findings of the trial Court. The trial Court has taken into consideration the adequate safeguards provided which protect the interest of the plaintiffs. If it is the plaintiffs' case that the structure in question is in a dilapidated condition, then it is always open for the plaintiffs to approach MHADA for suitable remedial action in accordance with law. The question whether the

plots are artificially demarcated and whether such artificial demarcation is being used by the owner to his advantage is a question of fact which could be gone into by the trial Court upon leading evidence. At this stage all the permissions on record by the competent authority demonstrates that the development is being carried out on Plot B. As recorded earlier, even the trial Court has taken into consideration the aspect that the development of Plot B carried out by the owner is subject to the all legal rights of the plaintiffs to get permanent alternate accommodation on the basis of their occupation of the suit premises.

8. In this view of the matter, I do not see any reason to interfere with the order passed by the trial Court.

9. The Appeal From Order is rejected. No orders on the interim application. Interim application is accordingly disposed of. No costs.

(M. S. KARNIK, J.)

