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

**WRIT PETITION NO. 3809 OF 2021
WITH
COURT RECEIVER'S REPORT NO. 5 OF 2022
IN
WRIT PETITION NO. 3809 OF 2021
WITH
COURT RECEIVER'S REPORT NO. 2 OF 2022
IN
WRIT PETITION NO. 3809 OF 2021**

Shardaben Natverlal Panchal

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Vinod Pandey a/w Ms. Nilima Sarvagod i/b A. S. Tripathi for the
Petitioner.

Mr. A. I. Patel, Addl. G.P. a/w Ms. S. D. Vyas, 'B' Panel Counsel, for the
Respondent No.1–State.

Mr. J. G. Aradwad (Reddy) for the Respondent Nos. 2 and 3.

Mr. Ashish Kamath a/w Ms. Simantini Mohite i/b Mr. Anil Mishra for the
Respondent No.4.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**

DATED : 29th APRIL 2022

P.C. :

1. Heard learned counsel for the parties.

2. On 13th April 2022, this Court passed the following order, having regard to the fact, that possession of Unit No.211 i.e. the subject premises, was not given to the petitioner. The said order reads thus:

“1. Possession of Unit 211 has not yet been given to the Petitioner.

2. On 23rd February 2022 we made the following order

“1. Prima facie we are not even remotely satisfied by the answer given by the 4th Respondent, Hubtown Ltd (“Hubtown”). The complaint of the Petitioner, a senior citizen more than 84 years old, is that she was allotted a flat on a lower floor, being flat Unit No.211 in the building constructed on CTS No.447 part and 447/1A of village Gundavali, Taluka Andheri, Baburao Pahilwan Chawl, Near Teli Galli, Saiwadi, Andheri (East), Mumbai 400069. This is building No.3AD and is part of Sant Dnyaneshwar Cooperative Housing Society part 2. The allotment of flat No.211 on lower floor was in accordance with SRA policy where preference on lower floors is given to senior citizens. Hubtown insists that the Petitioner though offered allotment did not accept it. Prima facie this does not reconcile with the documents on record including page 31 which is a direction from SRA to Hubtown, mentioning the Petitioner’s name specifically, and directing possession be given inter alia of Unit No.211. This is of 9th November 2017. If, according to the Hubtown possession was offered earlier, then this document and its subsequent non-compliance are without explanation.

2. The Affidavit in Reply insists that the Petitioner has been allotted flat No.1011 and then says flat No.211 is allotted to another person viz. Sanjay N. But we are told that there is somebody else in actual possession of flat 211, one Mr Ajay Bose. Indeed we are told that there is somebody else in possession of even Unit No.1011, one Mr Solanki, and even that unit is unavailable.

3. We decline the Hubtown’s counsel’s request to be

heard further in the matter. These particulars should have been before us. There should have been clarity as to who is in actual possession of which unit. Eligible persons cannot be made to run from pillar to post like this. Most especially, our senior citizens cannot be treated like this in the twilight of their lives. Given the way Hubtown has gone about things, we are not certain when an accurate picture will emerge if we leave it to Hubtown to argue and file affidavits. Hubtown is a developer. It has contractual obligations. It cannot resile from these and yet seek indulgence from this Court.

4. At this stage, therefore, we will require Court Receiver, High Court, Bombay to visit the building in question. The Court Receiver is not to take possession of any unit. The Court Receiver will ascertain from the occupants in actual possession of Units Nos.211 and 1011 names and identities of those occupants and the basis on which they claim to be in possession. The Court Receiver will produce an authenticated copy of this order if required by those persons. The Court Receiver will be entitled to demand from these persons copies of any documents on the basis of which they are in possession. The Court Receiver will retain copies of those documents for production before the Court. At this stage, the Court Receiver will not take any kind of possession of either of those flats.

5. The parties in actual possession, whoever they may be, are directed to cooperate with the Court Receiver. Any attempt to interfere with the work of the Court Receiver in execution of this order will be treated as an act of contempt and will be dealt with accordingly.

6. The proceedings are not required to be lodged with the Court Receiver.

7. In view of this, there is to be no parting with possession or alienation either of flat 211 or 1011 until further orders of this Court.

8. We list the Petition high on board on 1st March 2022.

9. All concerned will act on production of a digitally signed copy of this order.”

3. Then the Court Receiver’s report was taken on record on 1st

March 2022 and arguments were concluded. On 25th March 2022, the following order was passed.

“1. Heard. Arguments concluded.

2. The Court Receiver’s report is taken on record.

3. List the matter on 7th march 2022 for ‘Orders’.

4. All concerned will act on production of a digitally signed copy of this order.”

4. We have repeatedly extended time to the 4th Respondent Hubtown Limited to vacate the person in illicit occupation of Unit 211, one Ajay Bhoj and his family. We were told that his children had examinations. Without demanding any additional proof we granted Hubtown and Bhoj additional time.

5. Despite seeking repeated extensions, possession has still not been given to the Petitioner. All excuses have now been exhausted. Bhoj’s children’s examinations are over. Yet, Hubtown makes an application for a further extension until Monday, 18th April 2022.

6. Even this we were willing to consider except that Mr Kamat now has instructions to state and request that “in case Bhoj does not vacate by 18th April 2022 5.00 pm, then Hubtown will make an application to Court for appropriate orders and assistance against Bhoj.” We cannot think of anything we are less inclined to accept. The very suggestion opens the door to Bhoj to refuse to vacate and to Hubtown to claim helplessness. This is an attempt if not to overreach the Court then to avoid all previous undertakings. It is for Hubtown to make appropriate arrangements with Bhoj and his family. Injustice and inequity

cannot continue to be heaped on this Petitioner who is even today before us. She is nearly 80 years old. For 27 years she has been wandering in this alternate accommodation wilderness trying to get what is due to her by right and what is owed to her. Enough is enough.

7. We appoint the Court Receiver, High Court Bombay to immediately take symbolic possession of Unit 211, CTS No.447 part and 447/1A of village Gundavali, Taluka Andheri, Baburao Pahilwan Chawl, Near Teli Galli, Saiwadi, Andheri (East), Mumbai 400069, building No.3AD, part of Sant Dnyaneshwar Cooperative Housing Society Part 2. Until Monday, 18th April 2022 the possession of the occupant/s is not to be disturbed. On Monday, 18th April 2022 by 5.00 pm the occupant will deliver vacant and peaceful possession to the Court Receiver, High Court, Bombay and the Court Receiver will put the Petitioner and her family into vacant possession of that unit. The local police authorities at Andheri (East) will render all support to the Petitioner. They will act on production of an authenticated or digitally signed copy of this order. They will not demand a certified copy.

8. The occupant of the flat and Hubtown are not permitted to move any other Court except this Court for any orders in respect of Unit 211.

9. Mr Pandey for the Petitioner has a demand draft in the amount of Rs. 5,07,000/-. He accepts this on a without prejudice basis. He claims that permitted annual increases have not been included. We leave that question open for a further order on the

next date.

10. List the matter for compliance on 19th April 2022 for orders on the supplementary board. The Receiver will act without requiring a cash or money deposit from the Petitioners at this stage.”

3. Pursuant to the said order, the Court Receiver took symbolic possession of the said Unit No.211 and handed over possession of the same, to the petitioner. The Court Receiver has tendered the said report. The said report is taken on record.

5. The grievance of the learned counsel for the petitioner is, that the flat of which possession is taken i.e. Unit No.211 is completely inhabitable, in as much as, there are no electric fittings, no latches to the door, the flush tank removed etc. Learned counsel for the petitioner has tendered photographs in support of the said submission.

6. Learned counsel for the respondent No.4-developer, on instructions of the representative of the respondent No.4-Ali Murtuza makes a statement that they will make the said premises i.e. Unit No.211, habitable and will

fix the switches, switch boards, flush tank, wires, latches, etc. and will do plumbing and other works, so as to make the Unit, completely habitable(except window grille). Statement accepted. Learned counsel for the respondent No.4, on instructions, submits that the said premises will be made habitable by carrying out necessary repairs within two weeks from today. Statement accepted.

7. At this stage, learned counsel for the petitioner makes a grievance that the petitioner has not been paid the escalation cost, at the rate of 5% from December-2019. Learned counsel for the respondent No.4 submits, that the respondent No.4 will pay the escalation cost at the rate of 5% from December-2019 within two weeks from today. Statement accepted.

8. In view of the aforesaid, nothing survives for further consideration in the petition. Accordingly, the petition stands disposed of on the aforesaid terms.

9. The respondent No.4 to pay costs of Rs.25,000/- to the Court Receiver. The said payment shall be made within two weeks from today.

The Court Receiver is discharged in view of the disposal of the petition.

The Court Receiver's Report is also disposed of.

10. The Court Receiver to stand discharged without passing accounts but on payment of his costs, charges and expenses by the Petitioner as directed hereinabove, within two weeks from today.

10. Needless to state that the petitioner is at liberty to file appropriate proceedings, in the event, there is non-compliance of the order passed by this Court.

11. All concerned to act on an authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.