

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

**APPEAL FROM ORDER NO.602 OF 2022
WITH
INTERIM APPLICATION NO.3626 OF 2022
IN
APPEAL FROM ORDER NO.602 OF 2022**

Anil Balkrushna Kadam ...Appellant
Versus
Mumbai Housing and Area
Development Board Zone Borivali,
Mumbai and Ors. ...Respondents

.....

Mr. Pradeep J. Thorat with Ms Aditi Naikare for the Appellant.
Ms Anita Kadam, daughter of the Appellant, present.
Mr. Sunil Kenny, Respondent No.3-present.
Mr. Piyush Shah with Mr. Dishang Shah, Mr. Karan Ganedhi, Mr. Chirag U and Hetta Sagar for Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 14th JUNE, 2022.

P.C.:-

1. The Appellant herein has challenged the order dated 30/05/2022 whereby the learned Judge, City Civil Court, Dindoshi has dismissed Notice of Motion No.440 of 2022 in S.C. Suit No.299 of 2022.

2. The Appellant, who is the Plaintiff in the suit claims that he is in possession of a structure admeasuring 10x 30 sq. ft. with height of

10ft which is adjoining to tenement No.15/40 Rajendra Nagar, Om Sai Co-op. Housing Society, Borivali (E), Mumbai- 400 066 (hereinafter referred to as 'subject structure'). It is alleged that the said structure is existing since last over 30 years and that neither MHADA nor the society had raised any objections in respect of the said structure. It was only on 07/05/2021 that an application under Section 95(a) of MHADA Act came to be filed alleging that the subject structure is illegal and that the Appellant and his family members are unauthorised occupants.

3. The Appellant -Plaintiff was issued show cause notice, which was duly replied. The Appellant-Plaintiff submits that without considering his reply an order dated 03/02/2022 came to be passed on an application under Section 95(a) of the MHADA Act and the Appellant-Plaintiff has been directed to vacate the premises and hand over the possession of the same to the Society.

4. The Appellant-Plaintiff also has 1/ 4th share in Room No.15/40, which was occupied by his father. The Appellant-Plaintiff has also been directed to vacate the said structure. Aggrieved by the said order the Appellant-Plaintiff had filed a suit for declaration and injunction. During the pendency of which the interim relief was

sought. The learned Trial Judge having dismissed the notice of motion the Appellant-Plaintiff has filed this appeal.

5. During the course of hearing, Mr. Thorat, learned counsel for the Appellant under instructions states that the Appellant as well as Respondent No.3-Developers have arrived at the following settlement:-

(i) The Appellant-Plaintiff and his family members shall vacate the subject structure as well as premises under 15/40 on or before 01/07/2022.

(ii) Respondent No.3 shall enter into Permanent Alternative Accommodation Agreement with the Appellant in respect of 1/ 4th share in structure No.15/40 on or before 01/07/2022.

(iii) Respondent No.3 -Developer shall pay to the Appellant Rs.6,500/-towards 1/ 4th share of the Appellant in structure 15/40 till allotment of permanent accommodation.

(iv) Respondent No.3 shall pay to the Appellant

Rs.18,500/- in respect of subject structure for a period of three months from the date the Appellant and his family members vacate the premises.

(v) The Appellant shall apply to MHADA to determine his eligibility in respect of subject structure within a period of one week from the date of this order.

(vi) In the event the Appellant is held not eligible, Respondent No.3 shall continue to pay to the Appellant Rs.6,500/- towards his 1/ 4th share till the time he is allotted alternate accommodation and other benefits as per development agreement;

(vii) In the event the Appellant is held to be eligible in respect of the subject structure, Respondent No.3 Developers shall :-

(a) continue to pay to the Appellant, an amount of Rs.25,000/- p.m. till he gets permanent accommodation.

(b) enter into Permanent Alternative

Accommodation Agreement with the Appellant and give to him all the benefits as given to the other members, who are held to be eligible.

(viii) In the event the Appellant fails to vacate the premises by 01/07/2022, Respondent No.1-MHADA shall be entitled to demolish the subject structure without any further notice to the Appellant.

6. The statements made by the learned counsel for the Appellant and Respondent No.3 are accepted as undertakings to the Court. Respondent No.1-MHADA shall decide the application filed by the Appellant within a period of two months from the date of receipt of such application;

7. The appeal stands disposed of in above terms.

8. Civil /Interim Application(s) if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)