

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

APPEAL FROM ORDER NO. 788 OF 2022

Tarun Mahendra Patel and Anr.	...Appellants
V/s.	
Amool Shivaji Rokade and Ors.	...Respondents

Mr. Mayur Khandeparkar i/b. Mr. Mehul A. Shah, for the Appellants.

Mr. Samir Vaidya, for the Respondent No.1.

Ms. Manisha Jagtap a/w. Mr. Shubham Gade a/w. Ms. Padmaja Malgaonkar a/w. Mr. Mayuresh Ingale, for the Respondent – MHADA.

Mr. R. Y. Sirsikar, for the Respondent / MCGM.

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**CORAM : C.V. BHADANG, J.
DATE : 5 SEPTEMBER 2022**

P.C.

. The challenge in this appeal, at the instance of the Appellants / original Plaintiffs, is to the order dated 6 May 2022, passed by the learned City Civil Court at Mumbai, in Notice of Motion No.1747/2022 in Suit (Lodging) No.5181/2022. By the impugned order, the learned City Civil Court has refused to grant ad-interim relief sought for by the Appellants.

2. That premises of 'Bharat Green Lodging House' bearing House No.926-A and the shops abutting the said premises bearing No.926-B standing on City Survey No.1133 more specifically described in para 2 of the plaint are subject matter of dispute. Indisputably, there is a separate ground plus three storey structure known as 'Tukaram Smruti Building' standing on the said plot bearing City Survey No.1133. According to the Appellants, the suit premises were rented out to Late Anandiben Patel. The Appellants are the nephews of Late Anandiben Patel and claim to be in possession of the suit premises since last more than 30 years. It is the specific case made out that the suit premises are not part of Tukaram Smruti Building and there is no Memorandum of Understanding (MoU) or an agreement between the owner of the suit premises and the first Respondent – Developer for redevelopment of the suit property. It is pointed out that the Respondent – Corporation has issued a notice under Section 354 of the Mumbai Municipal Corporation Act (said Act, for short) in respect of Tukaram Smruti Building alone. It is pointed out that the suit properties are not subject matter of the said notice. The first Respondent has filed a proposal with the Respondent No.3 and 4 for redevelopment of the property standing on City Survey No.1133 as per DCR 37(7) of Development Control and Promotion Regulation 2034, which is pending.

3. The Appellants, apprehending interference / demolition of the suit premises under the garb of redevelopment and/or implementation of the notice under Section 354 of the said Act, filed the aforesaid suit for injunction restraining the Respondents from interfering or disturbing the Plaintiffs' possession over the suit property. The Appellants have taken out a notice of motion for similar reliefs pending disposal of the suit. It appears that on behalf of the Appellants, ad-interim relief were sought for in terms of prayer clause (a), (b) and (d) which are essentially in the nature of an order restraining the Respondents from interfering with the suit premises and/or from demolition and interference in the ingress and egress.

4. The notice of motion was resisted on behalf of the Respondents. The Respondent No.1 contended that a proposal for redevelopment of entire City Survey No.1133 of TPS-4 of Mahim Division which includes all the adjoining structures including Tukaram Smruti Building is filed with the Respondent Nos.4 and 5 and the premises have been inspected. It was contended that the premises are cessed properties and part of City Survey No.1133 and as per DCR 37(7), all the occupants of the suit property, whose names would be reflected in the certified list of tenants / occupants, will be entitled for the benefits of redevelopment.

5. The Respondent – Corporation claimed that Tukaram Smruti Building is declared as C1 category and therefore, the notice is issued under Section 354 of the said Act.

6. The Respondent Nos.4 and 5 pointed out that in response to a letter dated 12 April 2022, the Appellants have submitted necessary documents and the claim of the Appellants is under consideration. However, it was disputed that there is any apprehension of dispossession and/or demolition.

7. The learned City Civil Court after noticing the fact that the certified list of tenants / occupants is yet to be prepared and further having regard to the fact that the redevelopment is not yet approved by issuance of IOD and CC and further having noted that the Defendant Nos.4 and 5 are bound to give the benefits of redevelopment to the certified tenants / occupants, has found that there is no irreparable loss even if the suit premises are demolished. The learned City Civil Court has also come to the conclusion that an equally efficacious remedy is available to the Appellants for claiming benefits of redevelopment. In that view of the matter, the ad-interim reliefs have been refused.

8. I have heard the learned counsel for the parties. Perused record.

9. It is submitted by the learned counsel for the Appellants that the tenancy rights inherited by the Appellants through Late Anandiben Patel in respect of the suit premises are distinct. It is pointed out that these rights cannot be interfered with otherwise than in due course of law under the garb of redevelopment and/or implementation of the notice under Section 354 of the said Act. It is submitted that the suit premises are stand alone structures separate from Tukaram Smruti Building. It is submitted that the notice under Section 354 is only pertaining to Tukaram Smruti Building and not the suit premises of Bharat Green Lodging House. He submitted that the Appellants have a reasonable apprehension that under the garb of proposed redevelopment and/or the implementation of the notice under Section 354 of the said Act, the suit premises may be interfered with affecting the rights of the Appellants.

10. The learned counsel for the Respondent No.1 has pointed out the MoU dated 25 August 2015 between the Respondent No.1 being proprietor of M/s. Vimal Properties and Associates and Late Anandiben Patel. It is submitted that the proposal for redevelopment of the entire City Survey No.1133 is filed and is pending with the Respondent Nos.3 and 4. It is submitted that the suit premises are part of the structures standing on City Survey No.1133 which are proposed to be redeveloped under DCR 37(7). It is submitted that learned City Civil Court has

rightly found that the Appellants would not suffer any irreparable loss as they would be entitled to benefits of redevelopment and therefore, the ad-interim reliefs have rightly been refused.

11. I have considered the submissions made.

12. Admittedly, Late Anandiben Patel was the tenant of the suit premises. It can prima facie be seen that the notice under Section 354 of the said Act is in respect of Tukaram Smruti Building which is a separate structure than the suit premises. It can further be seen that the notice under Section 354 of the said Act does not include the suit premises. Thus, at least prima facie, there is no question of interference or demolition of the suit premises purportedly for implementation of the notice under Section 354 of the said Act. In so far as redevelopment is concerned, the proposal submitted by the Respondent No.1 is still pending before the Respondent Nos.3 and 4. The learned counsel for the Respondent Nos.3 and 4 submitted that it is at the initial stage. Admittedly, the IOD and CC is not yet issued.

13. After the appeal was reserved for judgment, on the last date, it was contended by the learned counsel for the Respondent No.1 that a group of persons purportedly at the instance of the Appellants had entered the area which was cordoned off and enclosed by sheets and had made an attempt to destroy the sheets enclosing the premises of Tukaram Smruti Building.

14. The said aspect is disputed on behalf of the Appellants. It is contended that on account of the fact that appropriate precautions are not being taken at the time of demolition of Tukaram Smruti Building, there is damage caused to the suit premises as there are cracks appearing on the wall etc.

15. Be that as it may, I do not propose to dwell on these allegations and counter allegations, as they are subsequent events and allegedly in respect of the enclosed space around the Tukaram Smruti Building. The parties are at liberty to take appropriate recourse as may be available to them in law and if so advised. I am primarily concerned about the refusal of the ad-interim relief in respect of the suit premises. Considering the fact that Late Anandiben Patel was admittedly a tenant of the suit premises and the Appellants claim to be her successors on the basis of a Will being her nephews and in possession of the suit premises and further having regard to the fact that the proposal for redevelopment of the structures in City Survey No.1133 is pending before the Respondent Nos.3 and 4, I find that it would be appropriate if the ad-interim relief is granted restraining the Respondents from interfering with the suit structure in any manner and/or the ingress and egress, otherwise than in due course of law. This order shall be in force during the pendency of the notice of motion. In the result, the appeal is partly allowed. The Respondents, their Officers and anybody on their behalf, are

restrained from interfering with the suit premises and the ingress and egress of the Appellants, in any manner, otherwise than in due course of law, pending disposal of the notice of motion. The hearing and disposal of the notice of motion is expedited.

16. The learned City Civil Court shall proceed to decide the notice of motion, on its own merits and in accordance with law, without being influenced by the ad-interim granted by this Court. Rival contentions of the parties, on merits, are left open. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.