

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.37 OF 2022

IN

APPEAL FROM ORDER NO.5 OF 2022

MESACON PROJECTS)
A partnership firm, being represented)
through its partner Mr. Vikram Mehta)
having address at 5, Rupayatan,)
137/138, S.V.Road, Irla, Vile Parle (W))
Mumbai 400056)...APPLICANT

IN THE MATTER OF

JOGINDERKUMAR SUNDERLAL WAHI)
Hindu Adult, Indian Inhabitant,)
Age about 71 years, Occupation : Business)
Residing at Flat No.B/32, Sohag (Andheri))
CHS Ltd., At Lallubhai Shamaldas Road,)
Andheri (West), Mumbai 400058)...APPELLANT

V/s.

- 1 **MRS.KANTA KARAMNARAIN WAHI**)
Age : about 70 years, Occ : Housewife)
Residing at House No.A-324, Derawal)
Nagar, Delhi 110009)
- 2 **MR.DINESH KARAMNARAIN WAHI**)
Hindu Adult, Indian Inhabitant)
Age : about 48 years, Occ : Business)
Residing at House No.A-324, Derawal)
Nagar, Delhi 110009)

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- 3 **MRS.SEEMA ABROL**)
 Hindu Adult, Indian Inhabitant,)
 Age : about 52 years, Occ : Housewife)
 Residing at Flat No.11 and 12, 3rd Floor)
 Inside Asha Colony, Juhu Tara Road)
 Mumbai 400049)
)
- 4 **SOHAG (ANDHERI) CHS LTD.**)
 Formed and registered under the)
 provisions of the Maharashtra)
 Co-operative Societies Act, 1960,)
 under No.Bom/HSG/3767 of 1972)
 through its Chairman/Secretary,)
 having its registered office at Plot No.61)
 TPS VI, Lallubhai Shamaldas Road,)
 Andheri (West), Mumbai 400058)
)
- 5 **MESACON PROJECTS**)
 A partnership firm, being represented)
 through its partner Mr. Vikram Mehta)
 having address at 5, Rupayatan,)
 137/138, S.V.Road, Irla, Vile Parle (W))
 Mumbai 400056)...RESPONDENTS

Ms.S.P. Trivedi i/b. Amar Khanna, Advocate for the Appellant/Applicant.

Mr. Suhail Shariff a/w. Mr.Sameer Shariff and Mr.Zoheb Merchant i/b. Falcon Legal, Advocate for Respondent Nos.2 & 3.

Smt. Nivedita Muller Pattan i/b. Volant Legal, Advocate for Respondent No.4.

Mr. Shyam Dewani a/w. Mr. Sumit Khanna and Mr. Chirag Chanani i/b. Dewani and Associates, Advocate for Respondent No.5 in A.O.No.5/2022 and for Applicant in I.A. No.37 of 2022.

CORAM : V. G. BISHT, J.

**RESERVED ON : 9th FEBRUARY 2022
PRONOUNCED ON : 23rd FEBRUARY 2022**

ORDER :

1 This is an application filed by the applicant, who is original defendant no.5 in the original Suit No.200 of 2020 filed before the City Civil Court, Dindoshi Division, seeking the following reliefs, in the circumstances stated in the application :

- “a) Direct the Appellant and Respondent no.2, to handover the vacant possession of the Flat bearing No.32, B-Wing, Sohag (Andheri) CHS Ltd., Lallubhai Shamaldas Road, Andheri West, Mumbai 400058 (the ‘Suit Premises’) constructed on the Property owned by Respondent N.4/ the Sohag (Andheri) CHS Ltd. (being the Property more particularly mentioned in Schedule of the said Development Agreement); for demolition and construction of new building when called upon by the Applicant as per the terms of the said Development Agreement;
- b) Allow the Applicant to deposit monthly Transit Compensation for first 24 months by means of

post-dated cheques, one-time Shifting Compensation of Rs.25,000/- & one-time brokerage compensation within 15 days of handover of vacant possession of suit premises to the applicant and any other amount as and when it becomes payable to owner of the suit premises, as per the said Development Agreement before the Hon'ble Court City Civil Court at Dindoshi Mumbai in Suit No.200/2020;

- c) Direct the respondent no.2 to execute all necessary documents including Permanent Alternate Accommodation Agreement in relation to redevelopment of suit premises as may be required.
- d) Allow the applicant to handover the new flat to be constructed and allocated to the owner of suit premises on completion of the New Building to the Hon'ble City Civil Court at Dindoshi, Mumbai and/or as per its directions in Suit No.200/2020.”

2 The original appellant/plaintiff has resisted the above said application by filing the Affidavit-in-Reply dated 2nd February 2022 whereas the respondent no.4 – society has supported the application by filing its Affidavit-in-Reply dated 5th February

2022. The respondent nos.1 to 3 although have not filed any reply but their counsel has made oral submissions.

3 I have perused the Affidavit-in-Reply of the appellant /plaintiff and various judgments in support thereof. I have also gone through the Affidavit-in-Reply of respondent no.4. Besides, I have heard all the parties at length through their respective counsel.

4 The controversy involved in the present application is in a very narrow compass. Here is a case in which most of the facts are undisputed. Undisputably, respondent no.4–Society is owner of building consisting of twelve flats which is to be demolished and redeveloped by the present applicant. There is again no dispute that nine out of twelve members have unanimously decided in the meeting of the respondent no.4 society dated 19th May 2019 to redevelop the building and upon completion of all procedures and obtaining all the requisite permissions, the Development Agreement dated 22nd November 2021 came into

existence. A copy of said agreement is very much on record. Again the said Development Agreement is signed by eleven out of twelve members.

5 The suit flat no.32 in 'B' Wing was originally allotted to defendant no.1 who was the member of defendant no.4 society. After his death, the society admitted his wife as a member and subsequently, upon her death, the defendant no.2 was admitted as a member and society has recognized him as the owner of the suit flat. The plaintiff (appellant herein) has filed the suit being Suit No.200 of 2020 in City Civil Court seeking declaration of his ownership qua the suit flat against the family members on the strength of his possession whereas respondent nos.1 to 3 have initiated proceedings in the Small Cause Court against him on the ground of he being a gratuitous licensee.

6 To note that, the controversy in the present proceedings at its simplest form is only about entitlement of the benefits of the Development Agreement in respect of the suit flat

as to who is entitled to get the alternate accommodation and other benefits between the appellant and respondent no.2, would be but a fair comment.

7 The role of respondent no.4 society to the property for redevelopment or the entitlement of the applicant to develop, to carry on the development activities by demolishing the existing, is not at all in dispute. The appellant/plaintiff himself has admitted in paragraph 9 of the interim application that if his rights are protected as per guidelines dated 3rd January 2009 and 4th July 2019, he is ready and willing to vacate and hand over the premises for demolition.

8 Even in the Affidavit-in-Reply to present application, the appellant admits that though physical possession of suit flat is with him, at present he is not living there. The respondent no.4-society, on its part, by way of Affidavit-in-Reply, has brought to the notice of this Court all the documents pertaining to the decision taken by the society to redevelop, IOD issued by the

Municipal Corporation of Greater Bombay and possession of respective flats being handed over by all other flat owners.

9 In the above scenario, the applicant/Developer is in no way concerned with the dispute between the appellant and respondent nos.1 to 3. What is infinitely more important is that the applicant/Developer cannot be deprived of the decision taken by majority of the members of the society to redevelop the society. At the same time, in the light of Development Agreement, the other members cannot be kept on hold and denied to get possession of their redeveloped property. Resolution dated 4th July 2019 issued by the Government of Maharashtra regarding redevelopment of land and various pronouncements of this Court such as **Disha Construction vs. Jaysen Mastakar and Others¹**, **Girish Mulchand Mehta and Another vs. Mahesh Mehta and Another²**, **Kamla Homes and Lifestyle Pvt. Ltd. vs. Pushp Kamal CHS Ltd. and Others³** and

1 2014 (2) Mh.L.J. 353

2 Appeal No.338/2009 in Arbitration Petition (L) No.493/2009 Bombay High Court (DB) dated 10.12.2009

3 Commercial Arb. Petition No.448 of 2018 Bombay High Court dated 3.5.2019

M/s. Mesacon Projects in Manojkumar Anirudhan vs. Sanjeev Kumar Anirudhan & Others⁴ are full of significance.

10 There cannot be two opinions that the concept of settled possession and right of possessor to protect his possession against the owner has come to be settled by a catena of decisions. One of such decision is given in the case of **Rame Gowda vs. M Varadappa Naidu⁵**. I may point it out here that the appellant and respondent no.2 have filed suits against each other in respect of the suit flat which is very much pending and the factum of settled possession is for the trial Court to look into it.

11 Similarly, in the case of **Heritage Lifestyles and Developers Pvt. Ltd vs. Amarvilla Co-operative Housing Society Ltd and Others⁶** this Court had an occasion to observe that if vacant possession is necessary as agreed for the development, keeping intact the relationship of the landlord and tenant and in a situation like this, there is no reason that the Court cannot pass

⁴ I.A. (L) No.22484 of 2021 in Suit (L) No.16384 of 2021 Bombay High Court dated 12/10/2021

⁵ 2003 LawSuit (SC) 1248

⁶ 2011 LawSuit (Bom) 309

order to dishouse respondent no.3 temporarily, subject to petitioner/developer providing the respondent no.3 alternative accommodation of similar size/area in the nearby locality along with other consenting members of the society. Again in the case in hand, there is no such situation like landlord and tenant. Rather, the appellant and respondent no.2 are claiming their right of ownership and title in their own way qua the suit flat, which is very much subjudice in the courts. Moreover, admittedly, appellant is not residing in the suit flat. However, the interest of both the parties is going to be taken care of by this Court.

12 For the foregoing reasons, I am inclined to allow the application in following terms :

ORDER

- i) The application is allowed.
- ii) The appellant and respondent no.2 are directed to hand over the vacant possession of the Flat bearing No.32, B Wing, Sohag (Andheri) CHS Ltd., Lallubhai Shamaldas Road, Andheri West, Mumbai 400058 (i.e. the suit premises)

constructed on the property owned by respondent no.4 / society (being the property more particularly mentioned in Schedule of the said Development Agreement) for demolition and construction of new building within the period of three weeks from today.

- iii) The applicant is permitted to deposit monthly Transit Compensation for first 24 months by means of post-dated cheques, one-time Shifting Compensation of Rs.25,000/- & one-time brokerage compensation within 15 days of handing over of vacant possession of suit premises to him and any other amount as and when it becomes payable to the owner of the suit flat, as per the said Development Agreement in the Hon'ble Court City Civil Court at Dindoshi, Mumbai in Suit No.200 of 2020.
- iv) The respondent no.2 is directed to execute all necessary documents including Permanent Alternate Accommodation Agreement in relation to redevelopment of suit premises as may be required.
- v) The deposit of the aforesaid amount and the allotment of new flat in the redeveloped building and all consequent benefits flowing therefrom shall abide by the outcome of Suit No.200 of 2020.

vi) It is clarified that this Court has not expressed any opinion / views as to the entitlement/rights of the parties over the Flat No.32.

vii) Interim application accordingly stands disposed off.

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

(V. G. BISHT, J.)