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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.29 OF 2020**

Mrs Sharada Balraj Sirisilla	...Petitioner
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Mr Mithilesh G Rajbhor, *with Suyog Pawar, Anita M Rajbhor for the Petitioner.*

Mr Umesh Mankapure *for SRA-Respondent No 4.*

Mrs Jyoti Chavan, AGP *for State.*

Mr SS Redekar, *for Respondent Nos. 5 and 8.*

Mr Mayur Khandeparkar, *with Disha Shetty for Respondent No.7.*

CORAM	G.S. Patel & Madhav J. Jamdar, JJ.
DATED:	23rd March 2022

PC:-

1. Rule.

2. There are affidavits-in-reply. We have heard all parties extensively on more than one occasion in the past. We make rule returnable forthwith and take up the petition for hearing and final disposal.

3. The Petitioner (“**Sharada**”) invokes our jurisdiction under Article 226 of the Constitution of India for the issuance of a writ of mandamus against the Deputy Collector, Respondent No.3, and the CEO of the Slum Rehabilitation Authority, Respondent No.4, to put her in possession of Room No.406 of the rehab building, the Sahana CHSL, Building No.5, Gomata Nagar, GK Marg, Lower Parel, Mumbai-400 013. The 5th Respondent to this petition is one Nitesh Shivaji Chiplunkar. The 8th Respondent, directed to be added by amendment, is his mother, Shubhangi Shivaji Chiplunkar (together, “**the Chiplunkars**”). Mr Redekar has instructions to appear for both of them.

4. The facts run like this. Sharada says that one Shivaji Balu Chiplunkar, the husband of the 8th Respondent, Shubhangi, and the father of 5th Respondent, Nitesh, occupied a hutment at CS Nos. 912 and 286 (P), Kamgar Nagar No.1, Lower Parel Division, New Prabhadevi Road, Prabhadevi, Mumbai-400 025. In the course of the slum rehabilitation scheme that was sanctioned inter alia on this property, Shivaji’s name was shown in Annexure II at Serial no.328 as an eligible slum dweller.

5. Sharada says that Shivaji disposed of his entire right, title and interest in this hutment to her, Sharada, on 14th September 2010 by an agreement of sale for a total consideration of Rs.22.50 Lakhs. A copy of this agreement is at pages 20 to 22. Accompanying this is a general power of attorney from Shivaji to Sharada, an affidavit by Shivaji, both dated 18th October 2010, and a consent affidavit dated 16th December 2010 (signed by Shubhangi). Copies are annexed.

We will return to these documents momentarily after we complete the factual narrative.

6. According to Sharada, she paid the entire consideration to Shivaji. The Agreement records his receipt of Rs.7.00 Lakhs. At a minimum, Sharada can immediately show payment of Rs.3.00 Lakhs by cheque to Shivaji.

7. Shivaji thus sold Hutment No.5 to Sharada, according to her. Sharada goes on to say that Shivaji's family knew of this transaction. They had in fact given possession of hutment No.5. There is a possession letter of 2nd May 2013 when Shivaji was alive.

8. Sharada says that she has various documents including an Aadhaar Card, Bank Passbook, Election ID card and so on to show her possession. On completion of the slum project, Sharada was allotted and put in possession of Room 406. Shivaji was alive and was present at the time of possession being given of Room 406.

9. There is now one other intervening event to which we must refer. It seems that Nitesh Chiplunkar, Respondent No.5, filed a Writ Petition No.1120 of 2018 in Court. Sharada was not made a party to this petition. A Division Bench of this Court was persuaded to pass an order that the public authorities (the respondents to that petition) should take appropriate steps in accordance with an order of 2nd December 2016 passed by the 2nd respondent to that petition. The 2nd December 2016 order was in respect of Flat

No.406. It said that Sharada was in illegal possession and that Shivaji was entitled to this Flat No.406.

10. This Petition raises a fundamental question that we are separately addressing. In many SRA schemes, those in occupation of hutments dispose of the hutments and their rights in those hutments. It is clear, as Mr Khandeparkar points out on behalf of the developers, that a disposal after the Annexure II is issued is prohibited by law. In this case, the Annexure II is demonstrably prior to the Agreement of 14th September 2010. The reason we say this is because the very agreement that Sharada relies on mentions the Annexure II in the very first recital and mentions Shivaji's serial number entry at 328.

11. The prohibition is not one that may have been to the knowledge of the parties but that is not the basis on which the parties, or the Court can proceed. However, it would, in our view, be entirely inequitable if the Chiplunkars were permitted to retain the entire amount that they received from Sharada and also at some late stage claim rights to Room 406 at a prime location like Worli or Prabhadevi where the per square foot rate is extraordinarily high. The Chiplunkars could not keep both Sharada's money *and* Room 406. They could not unjustly enrich themselves. The value of Room 406 would today be Rs.60.00 Lakhs to Rs.75.00 Lakhs. The amount transacted is also not small.

12. We are mindful of the limitations of what a writ Court can do and therefore, in this order, we propose to mould the relief to

balance equities between both sides. Before we do that, we note a few of the arguments raised by Mr Redekar and set out our reasons why we have not been persuaded to accept these.

13. Mr Redekar's instructions initially were to deny the agreement altogether. He really had little choice but to take this line, because the only other option was, as we have noted, clearly inequitable (i.e., the Chiplunkars getting to keep Sharada's money and Room No.406). Therefore, there was no such transaction, he said. He did not so quite as far as to alleged forgery or fraud. There was only this denial. He did however say on instructions that no consideration passed between Sharda to Shivaji Chiplunkar.

14. We reject this even on a prima facie view. The agreement is on a Rs.100/- stamp paper. That stamp paper is in the name of Shivaji Chiplunkar. So is the stamp paper for the affidavit and the power of attorney. The stamp paper purchase date endorsement is 4th September 2010 (for the stamp paper for the agreement for sale dated 14th September 2010) and 6th October 2010 for the stamp papers for the power of attorney and the affidavit. There is also a consent affidavit with a stamp paper of 8th October 2010. This is dated 16th December 2010. It is a telling document, because it is one that is signed by Respondent No.8, Shubhangi, herself. This is notarised.

15. If it a question of the signature of a Shivaji, then we find that the same signature appears on all the documents. There is no inconsistency in these signatures, and for the son or the wife to

merely deny the signature is of little use. The crucial document is the bank statement that Sharada has annexed to the petition at Exhibit 'B' at page 35. This shows a transfer by cheque on 18th September 2010 of an amount of Rs.3.00 Lakhs to Shivaji by cheque No. 661780. This is exactly the cheque number and the amount that we find mentioned in the receipt page of the 14th September 2010 Agreement at page 23.

16. At this stage, finding that a blanket denial could not be sustained, Mr Redekar had instruction to say that the maximum that was received by Shivaji was Rs.7.00 Lakhs because that is the amount of the receipt. But surely that completely defeats the first argument made by the Chiplunkars that there was no such agreement at all; and it then accepts that there was such an agreement, and that Shivaji did receive some consideration under it.

17. That there was a transaction, right or wrong between Sharada and Shivaji Chiplunkar is therefore in our prima facie view undeniable.

18. Shivaji died on 3rd September 2014. Sharada obtained possession of the premises before Shivaji died on 2nd May 2013. It was not until the present impugned action that she was removed from Room 406.

19. Prima facie, therefore, there is evidence to show that it is Sharada who has been in possession of Room 406 from 2013 until 2018 pursuant to the impugned action of 2nd December 2016.

Possession was resumed from Sharada in 2018 but that was done by Nitesh obtaining an order of the Court without joining Sharada and suppressing all these other documents that we have now shown.

20. We are conscious that the parties before us are of limited means. Of the two contestants, it appears to us that Sharada is the one who is more defenceless and is the more vulnerable. After all, she did part with a substantial amount of money. Even if the Chiplunkars deny it today, there is prima facie evidence of that amount having been received, at least substantially.

21. The parties will need to have their respective rights and contentions preserved and the equities balanced. There is no doubt that Sharada will have to institute a civil proceeding, if she has not already done so. We are told that she has filed Civil Suit No. 2445 of 2019 in the Bombay Civil Court. That Suit is pending. Nitesh is a Defendant to that proceeding, but Shubhangi is not. We propose to pass certain directions in regard to that Suit as well.

22. As to possession, having regard to these proceedings and since Nitesh and Shubhangi give their address as Room No.3, Kamgar Nagar No.2, New Prabhadevi Road, Opposite Samana Press, Prabhadevi, Mumbai-400 025, we appoint the Court Receiver, High Court, Bombay as the Receiver of Room No. 406, Sahana CHS Building No.5, Gomata Nagar, GK Nagar, Lower Parel, Mumbai -400 013.

23. The Court Receiver will take vacant possession of this Flat from the SRA. He will put Sharada into exclusive possession of the flat as an agent of the Court Receiver without payment of royalty. Sharada will execute the necessary agency agreement. This arrangement is subject to final orders in Sharda's City Civil Court Suit No. 2445 of 2019. That Court will be entitled to make all appropriate orders in regard to the agreements in question and the rights asserted by Sharada in respect of Flat 406.

24. All contentions in the Suit are expressly kept open on both sides. Sharada will not be entitled to claim equities in the City Civil Court Suit on the basis of this order, the appointment of the Court Receiver or the execution of the agency agreement. The present order is not to be construed as a determination or final adjudication of Sharda's rights in the flat. We also expressly leave open the question of whether such an agreement between Sharada and Shivaji Chiplunkar was illegal or was prohibited by law. We also leave open the question or whether Sharada is entitled to restitution or damages and if so in what amount.

25. Shubhangi Chiplunkar will need to be joined as a Defendant to that suit. We grant that leave now so as to save time. Sharada will be entitled to amend the plaint and any interim application in that suit to join Shubhangi. No separate order of the City Civil Court will be required in that behalf. The Registry in the City Civil Court will permit that amendment without need of reverification on production of an authenticated or digitally signed copy of this order.

26. Mr Redekar is on record for Nitesh in the City Civil Court proceedings. He states that he will enter a Vakalatnama and accepts service on behalf of Shubhangi in the amended suit. This is noted.

27. The Receiver will continue as a Receiver of the flat in question until further orders of the City Civil Court. A copy of this petition will be lodged with the Court Receiver's office but without a requirement of deposit of any fees with the Court Receiver.

28. We note that Mr Mankapure for SRA had written instructions from the Legal Consultant of SRA on 8th March 2022 saying that possession was recovered for tenement 406 and was handed over to Shubhangi Chiplunkar. The letter says that there was no clarity in the order of the competent authority (evidently a reference to the 2nd December 2016 order) as to whether there was actually a sale transaction between Shivaji and Sharada. The letter goes on to say that the SRA would evict Shubhangi and recover possession by revoking a letter dated 3rd December 2021. It appears from this that possession was recovered from Sharada and given to Shubhangi only in December 2021. This is the substance of the letters communicated by Mr Mankapure. We cannot take the letter on record since it is a privileged communication protected in law from disclosure and privilege has not been specifically waived by the Mr Mankapure's client. However, we do not believe that any further action by SRA is either now necessary or even appropriate in view of the order that we have now made. Indeed, SRA cannot decide the question of the agreement — that is the province only of a Civil Court. Any action independently by SRA would cause further complications. It only needs to be stated that since the matter of the

legality of the 14th September 2010 agreement is now before the City Civil Court, the SRA will need to abide by the decision of the City Civil Court.

29. We believe this order sufficiently balances the rights and equities on both sides. The petition is disposed of in these terms. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)