

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3052 OF 2019**

Yasmin Patel & Anr

...Petitioners

Versus

Maharashtra Housing and Area Development Authority & Ors

...Respondents

Mr VR Dhond, Senior Advocate, with Naushad Engineer, Sharad Bansal, Purvi Asher, Veer Ashar & Kalyani Deshmukh, i/b Mansukhlal Hiralal & Co, for the Petitioner.

Mr Yadunath Choudhary, with Kevin Periera & Nikhil Adkine, i/b Viraj Jadhav, for Respondent No. 5.

Mr TD Deshmukh, for MHADA.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 5th April 2022

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1. The dispute is really between the Petitioners and Respondent No. 5. The Petitioners claim a tenancy of Flat No. 3, 1st Floor, KS Batliwala Building, Plot No. 742, Road No. 5, Parsi Colony, Dadar, Mumbai 400 014. The original tenant was the Petitioner's maternal grandmother, Ratanbai. She was a tenant since 1931. She died on 12th July 1980. The Petitioner's mother, Ratanbai's daughter, Roshan became the tenant. Roshan died on 13th February 2010. The Petitioner's claim tenancy and say that they have been paying rent to

the owner-landlord. The Petitioners consented to redevelopment of the building.

2. The Petition itself recites that in 1960 one Darab Karkaria requested Ratanbai for permission to let him and his wife to stay in the flat. Darab Karkaria was a distant relative of Roshan's husband. Darab's sister and Roshan were good friends. Ratanbai agreed and the Petition itself says that Darab Karkaria gratuitously used and occupied one room in this flat.

3. Darab Karkaria died on 28th October 2002. He was survived by his wife Coomi Karkaria and their son Adil Darab Karkaria, Respondent No. 5. Paragraph 8 of the Petition says that Coomi Karkaria and Adil continue to be gratuitously, occupy one room in the flat.

4. Adil Karkaria denies the Petitioners' assertion that he and his father were ever 'gratuitous' licensees. He maintains that Darab and, after him, he were and are lawful sub-tenants and are statutorily protected.

5. There is no dispute that at the time of redevelopment possession was taken from Adil. Coomi Karkaria had already passed away by then.

6. The Petitioners challenge the execution of a Permanent Alternate Accommodation Agreement solely in the name of Adil. They say that he cannot acquire ownership rights in this fashion. He

was only an occupant. Their rights as tenants cannot be obliterated. The Petitioner have filed a Suit for ejectment of Adil Karkaria in the Court of Small Causes at Mumbai.

7. In these circumstances, in our view parties are required to be preserved in status quo until their rights are determined by the Court of exclusive jurisdiction, i.e. the Court of Small Causes, Mumbai. It is not possible to accept Mr Choudhary's submission on behalf of Adil that his client's rights should be adjudicated or declared in his favour in this Writ Petition. There is no doubt that even if Adil is a gratuitous licensee (which he denies), the law as declared by at least one Full Bench of this Court is that the ejectment of a gratuitous license can only be done by an appropriate proceeding in the Court of Small Causes at Mumbai which has exclusive subject matter jurisdiction. For the same reason, the tenants claim to exclusivity over the flat cannot be accepted in this Writ Petition. That will have to be decided in the Small Causes Court proceedings.

8. The task is therefore to see how best the Petitioners and Adil can have their respective rights and contentions preserved and how they can be maintained in status quo. Leaving the flat vacant serves no purpose.

9. We will therefore appoint the Court Receiver to take symbolic possession of the flat in the rebuilt building as and when it is ready and which is supposed to be flat No. 301 admeasuring of 106.84 sq mtrs on the 3rd floor of the new building. The builder Respondent

No. 4 and MHADA Respondent No. 1 are directed to inform the Court Receiver, High Court, Mumbai once the Occupation Certificate is obtained for the newly constructed building. The Court Receiver will take symbolic possession of flat No. 301 on the 3rd floor of this building and will put Respondent No. 5 Adil Darab Karkaria into possession as his agent on execution of an agency agreement without payment of royalty or security. Adil will be required to pay monthly outgoings and will do so on a no equities and without prejudice basis. None of the parties are required to make a deposit with the Court Receiver since we are only requiring a symbolic possession to be taken.

10. There is already a Permanent Alternate Accommodation Agreement between the developer and Adil Darab Karkaria. This has been stamped and registered. The stamped and registered document will be delivered into safe custody of the Court Receiver to abide by the final decision of the Small Causes Court proceedings.

11. The impugned MHADA letter of 3rd June 2017 at page 108 will necessarily also abide by the decisions of the Small Causes Court proceedings.

12. The Receiver is not to put up his board on the premises.

13. The appointment of the Court Receiver will be subject to final orders in the Small Causes Court proceedings where the respective

rights of the Petitioners and Adil Darab Karkaria will be finally determined in accordance with law.

14. All contentions before the Small Cause Court are expressly kept open.

15. The Petition is disposed of in these terms. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)