

Vidya Amin

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

**APPEAL FROM ORDER NO. 79 OF 2023
WITH
INTERIM APPLICATION NO. 1104 OF 2023**

Sanwar Munasharif Shah ... Appellant
Versus
The Municipal Commissioner, MCGM & Ors. ... Respondents

Ms. Ms. Archana Gaikwad for Appellant.

Mr. A. Y. Sakhare, Senior Advocate with Ms. Smita Tondwalkar for Respondent Nos.1 to 5/MCGM.

Mr. Anil Anturkar, Senior Advocate with Mr. Bhavik Manek i/b. Mr. Sharad Wakchoure for Respondent No.8.

Mr. Sushilkumar Gangurde, Colony Officer, 'D' Ward, present.

**CORAM: G. S. KULKARNI, J.
DATED: 22 February 2023**

P.C.

1. This Appeal from Order assails an order dated 13 January, 2023 passed by the learned Judge of the City Civil Court, Greater Mumbai dismissing Notice of Motion No. 60 of 2023 in S.C. Suit (St.) No. 14596 of 2022 as filed by the appellant/plaintiff. The case of the appellant/plaintiff is that he is entitled for a permanent alternate accommodation in lieu of the structure in his occupation, which is subject matter of redevelopment being undertaken by respondent no. 2. The appellant occupies Room no. 18, Chawl No. 14, Hut NO. 24 M/95/1105 situated on CTS No.338, near Ganjawala Compound, near Cement Godown behind Abhishaikh Building, Ganjawala Compound,

near Belasis Road Bridge, Tardeo, Mumbai. Respondent no. 6 is a Cooperative Society and is formed by the residents of the building. The building appears to have been declared dangerous and is categorized to be in the “C-1” category. Respondent no. 8, proceeding with the redevelopment had commenced demolition of the other structures. When such work was in progress, the appellant/plaintiff filed the suit in question contending that he is a tenant, hence he had become eligible for allotment of a permanent alternate accommodation, however, his name was not certified in Annexure-II, which was prepared in 2013 by the Municipal Corporation. Against the non-inclusion of the appellant’s name in Annexure-II, the appellant had approached the Assistant Municipal Commissioner/Competent Authority ‘B’ Ward, making a claim, contending that he be included in Annexure-II and be held to be eligible. Such application was filed during the pendency of the suit. On such application, the said authority passed an order dated 7 February, 2023 whereby the appellant/plaintiff has been declared to be ineligible for grant of permanent alternate accommodation.

2. The position as on today is that the entire redevelopment has been held up on account of appellant/plaintiff not vacating the premises. Photographs of the premises are relied upon by Mr. Anturkar, learned senior counsel for respondent no. 8 as also by Mr. Sakhare, learned senior counsel for the

Municipal Corporation. It is submitted that as the appellant/plaintiff is not eligible, he cannot stall the redevelopment project and would be required to immediately vacate the structure in occupation of the appellant.

3. Learned counsel for the appellant/plaintiff submitted that the appellant has already preferred an appeal against the order dated 7th February, 2023 which is pending adjudication before the Additional Collector. He submits that till the appeal is decided, protection be granted to the appellant of his structure not being demolished, however, the same is opposed by Mr. Anturkar and Mr. Sakhare.

4. Having heard the learned counsel for the parties for sometime, in the facts and circumstances of the case, in my opinion, it would be in the interest of justice that as a remedy of appeal being availed by the appellant/plaintiff, it would be appropriate that the appellant/plaintiff pursues the appeal and same be decided by the Appellate Authority as expeditiously as possible within a period of two months from today.

5. Mr. Anturkar, learned senior counsel for respondent no. 8 has taken a fair stand. He submits that there is no alternative for the appellant/plaintiff but to vacate the premises, however, to mitigate any immediate need of the appellant/plaintiff to occupy the temporary alternate premises, his clients shall

pay rent for two months to the appellant/plaintiff provided the appellant vacates within one week from today. He submits that however, payment of rent is no admission of any of the contentions of any rights being asserted by the appellant/plaintiff and that it would be strictly without prejudice to the rights and contentions of respondent no. 8 as and when they are required to be asserted.

6. In my opinion, the approach on the part of respondent no. 8 is fair. The appellant/plaintiff shall accordingly vacate the premises within one week from today. Respondent no. 8 shall make payment of an amount of Rs.40,000/- as a transit rent for two months. It is clarified that there shall not be any further extension for the appellant/plaintiff to vacate the premises. Ordered accordingly.

7. All rights and contentions of the appellant on the pending appeal before the Additional Collector are expressly kept open.

8. In the event, the appellant succeeds in proving his claim and if is held to be eligible by the Appellate Authority for a permanent alternate accommodation, respondent no. 8 shall be liable to pay the appellant transit rent similar to what is being offered to other tenants who have been displaced. Mr. Anturkar's statement that respondent no. 8 shall make such payment of the

transit rent if the appellant succeeds in his appeal is accepted as an undertaking to the Court.

9. The appellant/plaintiff shall place an undertaking on the record of this appeal on or before 27th February, 2023 that the appellant/plaintiff shall vacate the premises on or before 1st March, 2023. This would also entitle the appellant to seek the amount of transit rent as being offered by respondent no.8. It is clarified that if no such undertaking is placed, the Municipal Corporation as also respondent no. 8 are permitted to take further steps as permissible in law to remove the appellant/plaintiff from the premises so that the redevelopment can progress.

10. Needless to observe that inspection/ measurement/ survey of the structure of appellant/plaintiff be undertaken prior to the appellant vacating the said premises as per the usual procedure. Mr. Sakhare, learned senior counsel for the Municipal Corporation has fairly agreed that the concerned officer shall take a survey in the presence of the parties. All the parties to cooperate.

11. Disposed of in the above terms. No costs.

12. In view of disposal of Appeal from Order, Interim Application does not survive. It is accordingly disposed of.

(G. S. KULKARNI, J)