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

**INTERIM APPLICATION NO.14565 OF 2023
IN
INTERIM APPLICATION STAMP NO.26542 OF 2023
IN
CIVIL APPLICATION NO.2124 OF 2015
IN
CIVIL APPLICATION NO.1745 OF 2012
IN
FIRST APPEAL NO.813 OF 2012**

**WITH
CIVIL APPLICATION NO.2124 OF 2015
IN
CIVIL APPLICATION NO.1745 OF 2012
IN
FIRST APPEAL NO.813 OF 2012**

Vasudha Co-operative
Housing Society Ltd.

...Applicant

In the matter between

Ratilal S. Pujara (Decd)

1. Damyanti Ratilal Pujara & Ors.

...Appellants

vs.

Municipal Corporation of
Greater Mumbai and Ors.

...Respondents

Mr. Anilkumar K. Patil for the Applicant in IA No.14565/2023
Ms. Damyanti R. Pujara, Appellant in person with Advocate
Nizzica Francis.

Mr. Santosh Parad for Respondent-MCGM.

CORAM : N. B. SURYAWANSHI, J.

**RESERVED ON : 27TH OCTOBER 2023
PRONOUNCED ON : 9TH NOVEMBER 2023**

ORDER :

1. Facts in brief which are necessary to decide this application are that, Appellants-original Plaintiffs filed L. C. Suit No.5585 of 2005, with a prayer that Defendant Nos.1 and 2 (Municipal Corporation), and Defendant No.3-Society be restrained by way of permanent injunction from issuing IOD and CC to the Applicant-society. During pendency of the suit, Applicant-society passed a resolution and decided not proceed further with IOD and C.C. proposal. City Civil Court, therefore, dismissed suit as infructuous by order dated 3rd April 2005, this judgment and decree is challenged in the present First Appeal.

2. Alongwith First Appeal, Civil Application No.1745 of 2012, is filed by Appellants for stay to the trial Court's judgment and decree. On 19th December 2013, this Court passed the following order in Civil Application :

"1. None present for the Respondent No.3 Society. The applicant No.1, party in person, submits that her flat No.9, where she is residing, is not an unauthorised flat, which is a terrace flat. However, the society and the corporation have declared this flat as unauthorised. She has

apprehension that the society or the Corporation may take steps which may affect her flat. The learned Counsel for the Corporation submits that the society has already withdrawn the IOD and C.C.

2. Heard. In view of the uncontroverted submissions, the parties shall maintain status quo, pending appeal.

3. S.O. to 22.1.2014.”

By order dated 12th February 2014, this Civil Application was disposed of observing that :-

“By the order dated 19th December 2013, the parties have been directed to maintain status-quo pending the appeal. This direction would amount to disposal of the Civil Application. Hence, the same is removed from the board.”

3. First Appeal is admitted by this Court vide order dated 21st October 2013.

4. Thereafter following subsequent developments have taken place in the matter;

(a) The Municipal Corporation issued notice under Section 354 on 11th January 2015, declaring that the building of society was in dangerous condition and ordered that building is required to be demolished immediately. Appellants

challenged said notice by filing Writ Petition No.2190 of 2015. The Division Bench of this Court dismissed Writ Petition by order dated 16th October 2019, holding that, the said building was in dilapidated condition, and it was not safe for human habitation.

(b) Appellants challenged the judgment of Division Bench by filing Civil Appeal No.5825 of 2022, before the Apex Court, in which the builder-developer was also made party. The Apex Court dismissed appeal of appellants by judgment dated 25th August 2022 and confirmed the order passed by the Division Bench of this Court. The Corporation thereafter has demolished the said building, in which appellants' Flat No.9 was situated.

(c) The society, therefore, has moved this application contending that because of status quo order dated 19th December 2013, the developer has not started with redevelopment project. The developer is not paying displacement compensation/rent to the members under apprehension that because of status quo, he will not be put in possession, therefore, society prays that status quo order dated 19th December 2013, be vacated.

5. Heard learned Advocate for Applicant-society, Appellant No.1-party in person as well as her daughter-Appellant No.2 at length. Perused the record and written arguments along with the judgments filed by appellants and citations relied upon by the society.

6. Learned Advocate for the society submits that in view of demolition of the building of society, the status quo order does not survive. The society has ten members, and except appellants, nine members have agreed for redevelopment, however, appellants are not ready to co-operate in redevelopment of building on untenable grounds. Because of status quo order, the developer is not ready to redevelop the property, though he appeared in the appeal before the Apex Court and agreed to pay displacement compensation, the developer is not paying displacement compensation to the members under apprehension that because of status quo, he will not be put in possession. He therefore states that status quo needs to be vacated. In support of his submission he relied upon judgment in **Chirag Infra Projects Pvt. Ltd. vs. Vijay Jwala Coop. Hsg. Society Ltd. and Anr.**¹ and **Kamala Homes and Lifestyle**

¹ 2021 (3) Bom. C. R. 271

***Private Ltd. vs. Pushp Kamal Co-operative Housing Society Ltd. & Ors.*²**

7. Per contra, appellant Nos.1 and 2-party in person vehemently opposed the prayer of vacating status quo order. They submit that in the building of society, which is demolished, they had Flat No.9, with a terrace attached to it, which was regularised by the corporation, but applicant-society is not ready to give area of terrace to the appellants. According to them, no tripartite agreement is entered into and developer is not paying displacement compensation/rent, though he had undertaken to pay it before the Apex Court. According to them, this application is filed by applicant-society at the instance of developer. It is therefore submitted that unless and until tripartite agreement is entered into and they are paid compensation and they are given double the area of flat and terrace owned by them in the developed building, status quo granted in their favour should not be vacated.

8. I have given due consideration to the rival submissions of parties. Perused the record. It is a matter of record that status quo order was passed in view of

² 2019 (5) Bom. C. R. 731

appellants' apprehension that "*society or corporation may take steps which may affect her flat*", which is reflected in the order dated 19th December 2013. This Court, therefore, in view of uncontroverted submissions, directed the parties to maintain status quo, pending appeal. It is therefore clear that status quo was ordered by this Court as submissions of appellant No.1-party in person went uncontroverted and on the basis of apprehension expressed by her that steps taken by society or corporation may affect her flat.

9. Thereafter, corporation issued notice for demolition of the building of society in which, Appellants' Flat No.9 was situated. Challenge of appellants to demolition notice is repelled by the Division Bench of this Court and said order is confirmed by the Apex Court. In view of demolition of the building by the Corporation containing flat of appellants, status quo order passed in favour of appellants is rendered infructuous.

10. It is pertinent to note that the rights and interests of appellants is protected and taken care of in the order passed by the Division Bench of this Court as well as in the order passed by Apex Court. Apex Court in order dated 25th

August 2022, has observed :

“18. The relentless contention of the Appellants is that their right in the building will not be protected and get further affected after demolition of the building but the same is not sustainable in our considered view, for the simple reason that the Redevelopment agreement dated 19.12.2014, contains a clause protecting the rights of the appellants in the building which is reproduced hereunder :

- 1. Eight new flats each measuring 740 sq. ft. carpet area for flat owners i.e. flat no.1 to 8.*
- 2. Two new flats each measuring 1034 sq. ft. carpet area for 2 flat owners i.e. flat no.9 and 10 (including an area to be given in lieu of an open terrace attached to their respective flats.)*

19. The appellants herein are the occupiers of Flat No.9 which has a attached open terrace, therefore they have been given a larger carpet area. Further, the agreement also stated that instead of providing temporary alternative accommodation during the period of construction of the appellants and other members, Respondent No.5 shall pay displacement compensation @ Rs.30,000/- per month to each members. The said amount was later enhanced to Rs.40,000/- per month to each

member vide letter dated 18.12.2019. To add to this, one month displacement compensation was to be paid as a brokerage in addition to Rs.20,000/- as shifting and transport compensation to each member."

From clause (2) of paragraph 18 of the aforestated order it is clear that Appellants being owners of Flat No.9 and owner of Flat No.10 are allotted 1035 sq. ft. carpet area considering open terrace attached to their flats, whereas other members are allotted 740 sq. ft. carpet area. Thus, there is no merit in the contentions of appellants that area of their flats was shown less in proposal submitted by the society. Fact remains the said proposal is already withdrawn by the society.

11. It further appears that out of ten members of the society, nine have already consented for redevelopment and only appellants are opposing it. Neither appellants nor remaining members are getting displacement compensation/ rent. It is necessary to mention here that expeditious commencement of redevelopment of the building of society is in interest of appellants.

12. There appears substance in contention of

applicant-society that because of status quo order, the developer is not starting process of redevelopment and paying displacement compensation/rent. This Court (Coram : G.S. Patel, J.) in **Chirag Infra Projects Pvt. Ltd.** (supra) held :-

“21. It is to be noted that once the person becomes a member of the co-operative society he loses his individuality with the society and has no independent rights except which is given to him by the statute and bye-laws. Hence, objection raised by the respondent Nos.3, 4, 6 and 7 that there is no privity of contact between them and petition, is not maintainable.

22. Considering the above mentioned facts and the law declared by our High Court and also out of 18 members, 13 members already handed over vacant and peaceful possession of the flats to the petitioner to carry out redevelopment”.

13. This ratio is followed in **Manager, Maharashtra Rajya Sahakari Kapus Utpadak Panan Mahasangh Maryadit vs. Bhimashankar Tukaram Mate**³. Both these rulings support the case of applicant-society.

14. In support of their contention that, applicant-

³ 2019 (5) Bom. C. R. 738

society tried to approbate and reprobate in present matter,

Appellants have relied on following judgments :

(i) *Premalata @ Sunita Vs. Naseeb Bee & Ors. Civil Appeal No.2055-2056 of 2022.*

(ii) *G. Nagaiyan vs. Mr. K. Palanivel SA No.125/2014 and MP 1/2014 and CMP No.3572/2022*

(iii) *Rajinder K. Malhotra vs. Paresh B. Vyas & Ors. Contempt Petition No.2/2015*

(iv) *Dhananjay Sharma vs. State of Haryana & Ors (SC)*

dated 2/5/1995

(v) *K. D. Sharma vs. Steel Authorities of India Ltd. (SC) dated 9/7/2008*

(vi) *Hind Rubber Industries Pvt. Ltd. & Ors. vs. State of Maharashtra (2022 SC Online Bom 1640).*

15. The said submission of appellants is devoid of merits and judgments relied on by appellants, in my opinion, are not applicable to the facts of present case.

16. In view of the fact that status quo order was passed in favour of appellants, when the building wherein appellants' Flat No.9 was situated was in existence and

subsequently said building is demolished, the status quo order is rendered infructuous. Apex Court in its order dated 25th August 2022, has protected rights and interests of appellants. Redevelopment project is stalled because of status quo order passed in favour of appellants. In this peculiar facts, present application deserves to be allowed.

17. In the result, application is allowed in terms of prayer clause (a). It is made clear that if appellants have any grievance about redevelopment project and/or share allotted to them in redevelopment project they are entitled to avail appropriate legal remedy.

18. Civil Application No. 2124 of 2015 and Interim Application (Stamp) No.26542 of 2023 are disposed in view of disposal of this Interim Application.

19. At this stage, party-in-person prays for stay of this order for a period of 12 weeks, as she intends to challenge the order before Apex Court. Learned Advocate for Respondent-Corporation has strongly opposed the prayer. For reasons recorded in this order, prayer is rejected.

[N. B. SURYAWANSHI, J.]