

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1012 OF 2022
WITH
INTERIM APPLICATION NO.19324 OF 2022
IN
APPEAL FROM ORDER NO.1012 OF 2022

Kannamwar Nagar Tenants AssociationAppellants/Applicants
V/S

The Maharashtra Housing and Area
Development Board & Ors.Respondents

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WITH
INTERIM APPLICATION NO.1016 OF 2023
IN
APPEAL FROM ORDER NO.1012 OF 2022

Kannamwar Nagar Rangrekha
Co-operative Housing Society Ltd.Applicant

IN THE MATTER BETWEEN

Kannamwar Nagar Tenants AssociationAppellants/Applicants
V/S

The Maharashtra Housing and Area
Development Board & Ors.Respondents

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WITH
INTERIM APPLICATION NO.1001 OF 2023
IN
APPEAL FROM ORDER NO.1012 OF 2022

M/s. Vaibhavlaxmi Builders & DevelopersApplicant

IN THE MATTER BETWEEN

Kannamwar Nagar Tenants AssociationAppellants/Applicants
V/S

The Maharashtra Housing and Area
Development Board & Ors.Respondents

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Mr. Vishal Kanade a/w Mr. J.K. Shah i/b M/s. R.J. Law for the Appellants/
Applicants in AO and IAs.

Mr. Prakash G. Lad a/w Ms. Shreya Shah for the Respondent No.1-MHADA
in AO and IAs.

Mr. Shaheeb Shaikh a/w Mr. Ashrof Diamondwala i/b M/s. Vis Legis Law
Practice for Intervenor IA 1001 of 2023.

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CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 25, 2023.

P.C.:

1 By this Appeal, Appellant-Association challenge order dated 13 October 2022 passed by the City Civil Court in Draft of Notice of Motion tendered in Long Cause Suit (Stamp) No.11298 of 2022 by which the prayer for grant of ad-interim relief has been rejected.

2 The Appellant claims to be an Association of occupants of flats in Building No.1 to 29 at Kannamwar Nagar, Vikhroli (East), Mumbai. The Appellant-Association has instituted Long Cause Suit (Stamp) No.11298 of 2022 before the City Civil Court challenging notice dated 5 August 2022 issued by Respondent No.1-Maharashtra Housing and Area Development Authority (**MHADA**) calling upon the Appellant-Association to vacate the suit premises. The suit premises comprises office described as "Building No.5" near Gajanan Maharaj Chowk, Kannmwar Nagar, Vikhroli (East), Mumbai 400 083. It is the Appellants' case that the said office bearing Building No.5 has been allotted to the Appellant-Association for use of all the occupants of Building Nos.1 to 29.

3 Since the City Civil Court rejected the prayer for ad interim injunction by its order dated 13 October 2022, the present Appeal has been instituted. In the present Appeal order was passed on 21 October 2022 granting liberty to Respondent-MHADA to hear the Appellant-Association and pass a reasoned order. It appears that by order dated 10 November 2022, the demands of the Appellant-Association have been rejected. Accordingly, the present Appeal is amended to set up a challenge to the order dated 10 November 2022. An amendment application has also been filed in the suit to set up a challenge to the order dated 10 November 2022.

4 The main grouse of the Appellant-Association in the suit appears to be about their deprivation of use of the office bearing Building No.5, which they have been using for several years. It is the case of the Respondent-MHADA that Building Nos.17 and 19 are in the process of redevelopment and the office bearing Building No.5 is required to be demolished for the purpose of completing redevelopment project of Building Nos.17 and 19. It is also case of Respondent-MHADA that a community hall has been constructed in the redeveloped building. This Court therefore passed following order on 10 August 2023.

“1) Heard the learned Counsel for the parties.

2) Mr. Lad, the learned Counsel for the MHADA, seeks time to file an affidavit of a responsible Officer to indicate the dimensions of the hall to be made available in the re-development and the persons who would be permitted to make use of the said hall.

- 3) At the request of Mr. Lad, stand over to 19th August 2023.
- 4) Ad-interim relief, granted earlier, shall continue to operate till the next date."

5 In pursuance of order passed by this Court on 10 August 2023 Respondent-MHADA filed an Affidavit dated 18 August 2023 stating in paras 3 to 7 as follows:

"3. I say that one sector of Kannamwar Nagar Vikhroli of LIG consists of 29 buildings. I say that out of 29 buildings, the 20 societies have already been redeveloped.

4. I say that after premises in all 29 buildings were allotted to the occupants, occupants of 29 buildings have formed Federation and as they did not have any office, the request was made by the Federation to allot the office. The said request was accepted and Office Building No.5 was allotted by charging Rs.59/- as Municipal Taxes and Rs.37/- as Service Charges per month. I say that Office Building No.5 was allotted for office purpose and social and cultural activities. Hereto annexed and marked **Exhibit-"B"** is the copy of the Allotment Letter.

5. The Respondent No.1 has decided to join the redevelopment with Kannamwar Nagar Rangrekha CHS and Developer Vaibhavlaxmi Builders and Developers in redevelopment under DCR 33(5) and entered into tripartite agreement dated 29th November, 2021. Kannamwar Nagar Ratnarekha CHS and M/s. Vaibhavlaxmi Builders and Developers have agreed to construct and handover to Respondent No.1 the 26 tenements having built-up area ranging between 40.75 Sq.Mtr. to 66.72 Sq.Mtr, and three premises namely Rationing Office, Hall for MHADA and Welfare Centre. I say that recitals of said Tripartite Agreement specifically mentions and has made the provisions as follows:

Sr.No.	Wing	Floor	Type	Carpet area (in Sq.Mtr.)	Built-up area (in Sq.Mtr.)
1.	Wing C	Grd. Floor	Ration Office	95.35	101.66
2.	Wing A & B	1 st Floor	Hall for MHADA	229.97	250.74
3.	Wing C	1 st Floor	Welfare Centre	114.40	121.10
Total				439.72	473.50

6. I say that area of Office Building is 118.40 Sq.Mtr. I say that the grievances of the Appellants is that some recreation premises is required for occupants of Kannamwar Nagar. I say that accordingly, Respondent No.1 has made provision in sanctioned plan for Community Hall. The said Hall is permitted to be used by the occupants as per MHADA's policy.

7. I say that joint redevelopment as per Tripartite Agreement dated 29th January, 2021 has already completed. NOC Holder M/s. Vaibhavlaxmi Builders and Developers have constructed the Welfare Center and other premises as per the Tripartite Agreement. I say that the premises occupied by Appellants is required to be demolished as per the plan and parking area and commercial area is required to be developed therein and without the same, Building Permission Cell/MHADA will not issue the Occupation Certificate."

6 Thus, in the Affidavit filed on 18 August 2023 a vague statement was made that the hall in the newly constructed building would be permitted to be used by the occupants as per Responent-MHADA's policy. Since there was no clarity about the exact occupants who would be permitted to use the hall, Mr. Lad sought time to file a further clarificatory Affidavit when the present Appeal came up for hearing on 19 August 2023.

7 Mr. Lad has tendered Affidavit dated 22 August 2023 in which it is stated in paras 2 and 3 as under:

“2. I say that, the subject with regard to the use of community hall was placed before Authority and Authority by Resolution no.6341 dated 20th September, 2008 has resolved that all the Community Hall in MHADA’s Colony should be given on lease by inviting tender and as per prescribed manner.

*3. I say that it is further decided that in tender conditions following condition i.e. condition No.9 is been incorporated “The hall should be made free of costs available to any government department and welfare association of concern colony where the hall situated for celebrating religious function like Ganpati, Navaratra, etc. and for conducting annual meeting. The free of cost period will be 25 days per year.” Hereto annex and mark as **Exhibit-A** is the copy of the prescribed format of tender conditions and resolution no.6341 of MHADA.”*

8 Alongwith the Affidavit, terms and conditions of Tender have also been appended and condition No.9 in the Tender document reads thus:

“Condition No.9

The hall should be made free of costs available to any government department & welfare association of concern colony where the hall situated for celebrating religious functions like Ganpati, Navratra etc. and for conducting annual meetings. The free of costs period will be 25 days per year.”

9 Mr. Kanade, the learned Counsel appearing for the Appellant-Association would submit that even Affidavit dated 22 August 2023 is vague and does not clarify as to which of the occupants would be entitled to use the hall. He would submit that Respondent-MHADA has vaguely

stated in the Affidavit that the hall would be made available to any Government Department and Welfare of Association of “concern colony” (sic) where the hall is situated. Mr. Kanade apprehends that the words “concern colony” would be misinterpreted to mean that only the occupants of Building Nos.17 and 19 would be permitted to make use of the hall. Mr. Lad, the learned Counsel appearing for Respondent-MHADA, after taking instructions from the officials of Respondent-MHADA who were present in the Court would clarify that the words “concern colony” in the present case would mean the entire LIG sector. He would further clarify that the newly constructed hall would be permitted to be used by occupants of all 1 to 29 Buildings in accordance with the policy formulated by Respondent-MHADA as clarified in para 3 of the Affidavit.

10 Mr. Kanade, the learned Counsel appearing for the Appellant-Association would submit that this arrangement would take care of interest of the Appellant-Association atleast during pendency of the Notice of Motion and the Suit. He would further submit that since the Appellant-Association has been in occupation of the hall bearing Building No.5 for a considerable period of time, it is the Appellant-Association who should be permitted by Respondent-MHADA to operate the newly constructed hall. Mr. Lad would submit that the Appellant-Association will have to bid as and when tenders are invited for allotment of newly constructed hall. All contentions in this regard are kept open.

11 Since the hall bearing Building No.5 is required to be demolished for the purpose of completion of redevelopment project for Building Nos.17 and 19, the *ad-interim* protection granted by this Court is required to be vacated. Accordingly, the *ad interim* protection granted by order dated 21 October 2022 is vacated. With the above observations, the Appeal is disposed of and there shall be no order as to costs.

12 In view of the disposal of the Appeal from Order, the above three Interim Applications stand disposed of accordingly.

(SANDEEP V. MARNE, J.)