

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 13153 OF 2023****Vilas Prabhakar Jagtap & Anr.****..... Petitioners****VERSUS****Rasilaben Mahipatrai Shah Family
Trust & Ors.****..... Respondents**

Mr.Balasaheb Deshmukh for the Petitioners.

None for the Respondents.

CORAM: RAJESH S. PATIL, J.**DATE : 20th OCTOBER, 2023****P.C:-**

This writ petition challenges the impugned judgment and order dated 23rd March, 2023 passed below Ex.13 in R.A.E. & R.Suit No. 359 of 2021.

2. It is the case of the petitioners that they are the tenants of Room No. 14, situated at Daya Manzil Building, Plot No. 39, B.J.Deorukhkar Road, Naigaon, Dadar, Mumbai – 400 014. It is the case of the petitioners that the respondent landlord entered into a Permanent Alternate Accommodation Agreement, dated 28th July, 2021 in lieu of the suit premises, under the provisions of Regulation 33(7) of the Development Control and Promotion Regulation - 2034 (DCPR-2034).

3. Before the landlord could enter into the Permanent Alternate Accommodation Agreement with the petitioners/tenants, he had already filed an eviction suit under the provisions of the Maharashtra Rent Control Act on 10th February, 2020.

4. It is, therefore, argued by Mr.Deshmukh, learned counsel for the petitioners that once the Permanent Alternate Accommodation Agreement is entered into with the tenants, a suit for eviction would not lie as after entering into the Permanent Alternate Accommodation Agreement and the building having been demolished, the suit premises itself is not in existence and therefore the suit cannot proceed further.

5. The Court of the Small Causes after hearing the parties, has come to a conclusion that even though an agreement for Permanent Alternate Accommodation is entered into, a suit may proceed till the society is formed and therefore the application of the petitioners/tenants was rejected.

6. Mr.Deshmukh also argued that this is not the case where redevelopment is sought under the Rent Act under section 16(1) (i).

7. I have heard Mr.Deshmukh. The suit for eviction was filed on 10th February, 2020 under the Maharashtra Rent Control Act and on 28th July, 2021 an Permanent Alternate Accommodation Agreement was entered into by the landlord with the petitioners/tenants under the Regulation 33(7) of the DCPR-2034.

8. The Regulation 33(7) sub-rule 18 of the DCPR-2034 reads as under :-

(18) Restriction on transfer of tenements shall be governed by provision of Rent Control Act till Co.Op. Society is formed and after that the same shall be governed by the provision of Maharashtra Co-op. Society's Act.

9. In view of the specific condition mentioned in sub-section 18 of Regulation 33(7), according to me, the learned Single Judge was right in rejecting the application.

10. Hence, this writ petition is dismissed. No costs.

[RAJESH S. PATIL, J.]