

10 November 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17263 OF 2023

IN

APPEAL FROM ORDER (ST.) NO. 31520 OF 2023

WITH

APPEAL FROM ORDER (ST.) NO. 31520 OF 2023

Sashidhar P. Nair

....Applicant

Appellant

V/s.

Randhir Harshadrai Joshi

and Ors.

....Respondents

ALONGWITH

INTERIM APPLICATION NO. 17265 OF 2023

(LEAVE TO APPEAL)

IN

APPEAL FROM ORDER (ST.) NO. 31517 OF 2023

WITH

APPEAL FROM ORDER (ST.) NO. 31517 OF 2023

WITH

INTERIM APPLICATION (ST.) NO. 31519 OF 2023

1. Madhuri Vilas Sawant

and Ors.

....Appellants

V/s.

10 November 2023.

Randhir Harshadrai Joshi and Ors.

...Respondents

Mr. Pralahad Paranjpe with Mr. Nikhil Patil i/by. Mr. P.M. Jadhav, for the Appellants.

Mr. Raghavan Sarathy a/w. Ms. Prachi Kolambekar, Ms. Ruchita Chavan i/by. Thodur Law Associates, for Respondent No.1.

Mr. Rupesh M. Geete, i/by. Satyaki Law Associates, for Respondent No.3.

Mr. Vikramjeet Garewal i/by. Mr. R.B. Khanolkar, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

Dated : 10 November 2023.

P.C. :

Interim Applications No. 17263/2023 and Interim Application No.17265 of 2023 :

1. These Interim Applications are filed seeking leave of this Court to file Appeal challenging the order dated 16 October 2023 passed by the City Civil Court in Notice of Motion No. 3222/2023 filed in Special Civil Suit No. 2148 of 2023. Appellants are not impleaded as party defendants to the suit. Plaintiff claims right in the suit flats on the basis of adverse possession. Appellants have apparently purchased the suit flats in view of the registered agreements for sale dated 22 April 2015. In that view of the matter,

10 November 2023.

leave is granted to the Appellants to file Appeals. Interim Applications are accordingly disposed of.

Appeals from Order (St.) No.31520 of 2023 and Appeal from Order (St.) No. 31517 of 2023 :

2. Appeals are filed by the appellants challenging order dated 16 October 2023 passed by the city Civil Court partly allowing Notice of Motion No. 3222/2023 filed by the Plaintiff granting interim injunction in their favour. The City Civil Court has passed the following order on 16 October 2023.

1. Notice of Motion No.3222/2023 filed by the plaintiff is partly allowed.
2. Defendant No.2 is directed to pay transit rent to the plaintiff within one week from today and till the building is reconstructed. After receipt of transit rent, the plaintiff shall vacate the suit flat within one week.
3. Defendant No.2 shall execute Permanent Alternate Accommodation Agreement in favour of the plaintiff within two weeks.
4. If the building is constructed during pendency of the suit, defendant No.2 shall hand over possession of the Permanent Alternate Accommodation in favour of the plaintiff.
5. If the building is not constructed during pendency of the suit, the handing over possession of the permanent alternate

10 November 2023.

accommodation to the plaintiff shall be subject to the decision of the suit.

6. The plaintiff is also entitled for the monetary benefits equal to the flat owners of the old building.

7. The Notice of Motion filed by defendant No.2 is disposed off and the same be registered for statistical purpose.

3. Plaintiff has instituted S.C. Suit No. 2148 of 2023 seeking a declaration that he is the owner in respect of the suit flats bearing No.107 and 108 situated in Ramesh Co-operative CHS Ltd. Ramesh Apartment, Kasturpark, Shimpoli, Borivali, Mumbai. Perusal of the plaint would show that the Plaintiff has not disclosed the manner in which he has acquired the possession of the suit flats though he contends that he is in occupation of the same. It appears that the suit flats were originally owned by Smt. Daksha Bhaskar Joshi and Mr. Bhaskar Joshi who were admitted as members of Respondent No.2-Society. The Appellants purchased the suit flats by way of agreement for sale dated 22 April 2015. Pursuant to the said agreements, Appellants have been admitted as members of Respondent No.2-Society. The building of the Society is undergoing the process of redevelopment. Plaintiff apprehended that the redevelopment of the building would result in her dispossession and has accordingly

10 November 2023.

instituted S.C. Suit No. 2148 of 2023 seeking declaration of ownership in respect of the suit flats and claiming benefits of redevelopment in the form of execution of Permanent Alternate Accommodation Agreements (PAAA) and transit rent. Curiously, Plaintiff has not impleaded the Appellants who claim to be the owners of the suit flat. Plaintiff feigns ignorance about acquisition of ownership by Appellants. Plaintiff filed Notice of Motion No. 3222 of 2023 seeking injunction from dispossession and for grant of benefits of redevelopment in the form of PAAA and transit rent. The City Civil Court has proceeded to allow the Notice of Motion No. 3222 of 2023 by order dated 16 October 2023.

4. I have heard Mr. Paranjpe, the learned counsel appearing for the Appellants, Mr. Sarathy appearing for Respondent No.1, Mr. Garewal, appearing for Respondent No.2-Society and Mr. Geete, the learned counsel appearing for Respondent No.-3-Developer.

5. There is no doubt to the position that the Plaintiff is in possession of the suit flats. The process of redevelopment cannot result in dispossession of the Plaintiff from the suit flats. If Appellants claim to have purchased the suit flats in the year 2018, they ought to have filed proceedings for ejectment of Plaintiff from the suit flats and for recovery of possession. Admittedly, till

10 November 2023.

date, the Appellants have not filed any proceedings for recovery of possession of the suit flats. In that view of the matter, mere demolition of the building and reconstruction thereof cannot result in dispossession of the Plaintiff from the suit flat. The transit rent/hardship compensation is being offered to the occupants by the Developer on account of their dispossession from the respective flats. Since the Plaintiff is being dispossessed from the suit flat, he would be entitled to the payment of transit rent. In this regard reliance of Mr. Sarathy, on the Division Bench Judgment of this Court in **Vipul Fatehchand Shah V/s. Nav Samir Co-operative Housing Society and Ors. (Commercial Arbitration Petition (L.) No.20814 of 2023 decided on 6 October 2023** appears to be apposite. This Court held in para-6 as under :

6. We have heard learned Counsel and find that in so far as the issue of transit rent is concerned, the law is now well settled. It is not in dispute that the transit rent is to be paid to the person, who is being dishoused from the premises in question. It is also clear that the person dishoused for the purpose of redevelopment shall be put back into possession on completion of the redevelopment. It is clear that inter se disputes qua title and/or entitlement to the flat, which is subject to redevelopment, are not factors which are relevant or to be considered for purposes of payment of transit rent as also possession being handed back to the person dishoused on completion of the redevelopment. To that extent, the Appeal must succeed. Hence, we dispose of the present Appeal with the following modification to the Impugned order :-

10 November 2023.

(1) We direct that from the date of handing over possession of the said Flat No.4, the Developer shall make payment of inter alia transit rent to the Appellant in terms of Clause 12(c) of the impugned order.

(ii) We make it clear that on completion of redevelopment, the Appellant shall be put back into possession of the flat which which has been built in lieu of Flat No.4 in the redeveloped building.

(iii) We make it clear that this order or the fact that the Appellant has received the transit rent and has to be put back into possession on completion of the redevelopment, shall not in any manner prejudice the rights and/or claims and/or pending legal cases of Respondent No.3 *qua* Flat No.4 or the flat which shall be handed over to the Appellate on completion of the redevelopment, i.e. the flat which is handed over to the Appellant in lieu of Flat No.4.

6. Therefore I do not find any error being committed by the City Civil Court in directing the Developer to pay transit rent to the Plaintiff on account of being dishoused. Though, Mr. Paranjape has attempted to canvass before this Court that the direction to pay transit rent is required to be made subject to the outcome of the suit, I feel that issuance of such clarification is not necessary. Appellants are yet to institute any proceedings for recovery of the suit flat. As and when such proceedings are filed by the Appellants, if any orders are passed in such proceedings, the rights of the parties to either occupy the suit flats, for execution of PAAA and for payment of

10 November 2023.

transit rent would get crystallised. As of today, the Appellants are not entitled either for payment of transit rent. .

7. Direction No.3 of the City Civil Court is for execution of agreement for PAAA with the Plaintiff. Here there are two aspects. The first aspect is about right to receive possession of alternate accommodation in lieu of suit flats. The second aspect is about execution of the agreement for Permanent Alternate Accommodation. So far as handing over possession of Permanent Alternate Accommodation is concerned, in my view, the same must be handed over to the Plaintiff. This is because it is the Plaintiff who will be dishoused and dispossessed on account of demolition of the building. Therefore, mere demolition of the building cannot result in his dispossession. Therefore, there is no error in the order of the City Civil Court in directing the Developer to handover possession of the Alternate Accommodation in favour of the Plaintiff. He would hold possession thereof until dispossessed by the Appellant by following due process of law or till decision of his suit.

8. However, so far as direction to execute the agreement for Permanent Alternate Accommodation is concerned, there appears to be difficulty. As of now, the Plaintiff has not shown any document of title in his favour. On the contrary, the Appellants have produced registered agreements for sale in respect of their

10 November 2023.

claim of title in respect of the suit flats. Additionally, the Society has admitted Appellants as members. The PAAAs will have to be necessarily executed with the Members of the Society. Therefore, though possession of the alternate accommodation can be handed over to the Plaintiff, the PAAAs will have to be executed with the Appellants, who are members of the Society. To this limited extent, the order of the City Civil Court requires modification.

9. Accordingly, I proceed to pass the following order :

(i) The order dated 16 October 2023 passed by the City Civil Court is upheld, except its direction (iii) in the operative part of the order. The direction of the City Civil Court for execution of PAAAs by the Developer in favour of the Plaintiff, is set aside. Instead, the Developer is directed to execute PAAAs in respect of the suit flats with the Appellants.

(ii) The City Civil Court shall not be influenced by the observations made in this order. All contentions of the parties are left open.

10 November 2023.

10. With the above directions, the Appeals are disposed of. With disposal of the Appeal, any Interim Applications pending therein do not survive. The same also stand disposed of.

SANDEEP V. MARNE, J.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.11.10
17:56:39 +0530