

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

WRIT PETITION NO. 2816 OF 2023

Ravindu Naresh Turakhai

...Petitioner

Versus

Suresh Ramsagar Sharma & Ors.

...Respondents

Mr. Arun Panickar for the Petitioner.

CORAM: SANDEEP V. MARNE, J.

DATE : 18 AUGUST 2023.

ORAL ORDER:

By this petition, Petitioner challenges order dated 07 July 2022 passed by the City Civil Court, Borivali Division, Mumbai in Chamber Summons No.629 of 2022 filed in L. C. Suit No.867 of 2022. By the impugned order, the Court has dismissed the Chamber Summons filed by Petitioner seeking proper valuation of the suit instituted by Respondent No.1 under the provisions of Section 6(iv)(d) of the Maharashtra Court Fees Act, 1959 (**Court Fees Act**).

2. Respondent No.1, in his capacity as tenant, has filed L. C. Suit No.867 of 2022 in the City Civil Court, Borivali Division, Mumbai against Municipal Corporation for Greater Mumbai and against

Petitioner who is a landlord. In his suit, Respondent No.1 has challenged Intimation of Disapproval (I.O.D.) issued by the Municipal Corporation for redevelopment of the suit property and further sought to restrain the landlord and the developer from selling any premises in the sale component of the building. Respondent No.1 has further prayed for enforcement of his rights secured under the provisions of Section 354 (5) of the Mumbai Municipal Corporation Act by seeking declaration that he is entitled off two shops of the new construction of area certificate + 25% fungible area. He has also prayed for execution of agreement for permanent alternate accommodation as well as agreement for temporary alternate accommodation. The suit has been valued at Rs.1000/- under the provisions of Section 6(iv)(5) of the Court Fees Act.

3. Petitioner, who is defendant No.3 in the Suit, filed Chamber Summons No.629 of 2023 seeking directions for correct valuation of the suit under provisions of Section 6(iv)(d) of the Court Fees Act with further directions to Plaintiff to pay the deficit court fees.

4. By order impugned in the present petition, City Civil Court has proceeded to dismiss the Chamber Summons No.629 of 2023.

5. Mr. Panickar, the learned counsel appearing for Petitioner would submit that prayer clauses (e) and (f) of the suit are couched in such a manner that Plaintiff is seeking entitlement in respect two shops in newly constructed building in addition to 25% fungible area by way of permanent alternate accommodation. That such shop premises in respect

of which rights are claimed by Respondent No.1 are susceptible to valuation and therefore the suit ought to have been valued under the provisions of Section 6(iv)(d) of the Maharashtra Court Fees Act. He would further submit that under the provisions of Section 355 of the Act, Respondent No.1 could have sought a declaration in respect of only the area in his possession and because he is seeking allotment of additional 25% area, it cannot be stated that the suit is for enforcement of statutory rights. He would therefore submit that the City Civil Court has erred in arriving at a conclusion that the suit is filed for enforcement of statutory obligations. In support of his contentions, Mr. Panickar would rely upon judgment of this Court in **Dr. G. V. Iyengar & Anr. Vs. A. R. Sampathkumar & Ors**, Appeal from Order No.493 of 2006 decided on 29 February 2008 and **Ms. Indrapuram Resort Apartments, Through Partners, M. R. Ashok G. Khushalani & Another Vs. Ramniklal A. Jain**, Writ Petition No.4461 of 2012 decided on 05 October 2012.

6. I have considered the submissions canvassed by the learned counsel appearing for the Petitioner. I have gone through the plaint as well as order passed by the City Civil Court, Mumbai. In his plaint, Plaintiff-Respondent No.1 has sought following prayers-

a. That it be declared that the impugned **I.O.D. bearing No. P-8423/2021/ (141/A)P/S WARD/ PAHADI/ GOREGAON-W/ IOD/1/NEW** issued by the Defendant No.1 in view of the proposal of the defendant No.3 for redevelopment over the suit property is illegal, uncalled, unwarranted, bad in law, further the **I.O.D>** has been issued without following the due process of law and without observing the procedure laid down by the Hon'ble

High Court in Writ petition No. (L) 1135 of 2014, hence it deserves to be defenestrated and set aside.

b. That this Hon'ble Court be please to issue permanent order and injunction restraining the Defendant No. 1 and 2, their agents, servants, and any persons claiming through or under them from granting any permission of any nature what so ever, to the Defendant No. 3 and 4, in respect of the plot of land bearing No. 63-64, Village Goregoan, Shree Nagar Society, M.G. Road, Goregoan (W), Mumbai-400 06, specifically restraining the Defendant No.1 and 2 from granting the commencement certificate and/or any further permission without consent of plaintiff.

c. That this Hon'ble Court be please to restrained the Defendant No.3 (Landlord) along with Defendant No.4 (Developer), their servants, agents, person or persons claiming through them by an order of injunction from putting up and or selling any premises of the sale component until and unless the Rehab Component of the tenants building is completed and allotted to the plaintiff.

d. That this Hon'ble Court be pleased to pass an order directing the defendant No.3 to take express consent of the plaintiff and only thereafter the defendant No.3 be allowed to apply before the BMC for obtaining the Commencement Certificate and /or granting any further permission.

e. That this Hon'ble Court be please to declare that the rights of the plaintiff is secured under the provisions of Section 354 (5) of the MMC Act and the plaintiff is entitled off 2 shops in the new construction of area stated in the area certificate plus (+) 25 % fungible area in the Permanent Alternate Accommodation to the plaintiff.

f. That this Hon'ble Court be please to direct the defendant to restore back the plaintiff in the premises and comply with all the statutory obligation under Section 354 (5) of the MMC Act and thereby make, enter and execute an agreement for permanent alternate accommodation as well as agreement for temporary alternate accommodation to the plaintiff.

- g. That this Hon'ble Court be please to direct the Defendant No.3 (landlord) to provide Temporary Alternate Accommodation in regards to the suit property and every part thereof.
- h. Interim and ad-interim reliefs in terms of prayer clause above be granted.
- i. Any other and further reliefs as the nature and circumstances of the case may require be granted.
- j. Cost of the Suit be provided for.”

7. So far as prayers (a) to (d) and (g) to (j) are concerned, Mr. Panickar does not have any objection with regard to valuation of the suit. However, inviting my attention to prayer clauses (e) and (f), he would submit that since allotment of permanent alternate accommodation of a specified area is sought, which is in excess of permissible statutory area, Suit was required to be valued under Section 4(1)(d) of the Act.

8. First part of prayer clause (e) undoubtedly seeks statutory rights under Section 354 of the Act which reads as under-

354. Removal of structures, etc., which are in ruins or likely to fall

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure. [subject to the

provisions of section 342] and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure. to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) **The action taken under this section shall not affect the *inter se* rights of the owners or tenants or occupiers, including right of re-occupation in any manner.**

9. Thus, under Sub-Section 5 of Section 354, mere action taken against a building in ruinous conditions under the provisions of Section 354 does not, in any manner, affect rights and obligations of the owners and tenants, which includes right of re-occupation. Thus, under provisions of Sub-Section 5 of Section 354, the rights and obligations

between landlord and tenant continue to subsist notwithstanding demolition of building under Section 354 of the Act.

10. By way of present petition, the Respondent-Plaintiff seeks enforcement of his tenancy rights. He believes that under the law, he is entitled to additional 25% fungible area while allotting the permanent alternate accommodation. Whether he is actually entitled to such an additional area is something which would be decided at the time of final decision of the suit. Plaintiff will have to prove before the Court that under the Statute, Rules or Policy, he is entitled to be allotted 25% additional fungible area. If his prayer for additional fungible area is found to be not traceable to any statutory provision, he would fail in that prayer. However mere inclusion of such prayer would not necessitate valuation of suit under Section 6(iv) (d) of the Court Fees Act.

11. The dispute in the suit filed by the Plaintiff essentially concerns Plaintiff's entitlement to permanent alternate accommodation and temporary alternate accommodation. It would be too harsh for a tenant to require payment of court fees by valuing the suit on the basis of valuation of the permanent alternate accommodation. The Trial Court has arrived at a conclusion that the suit is filed for enforcement of statutory obligations. The Plaintiff may or may not be entitled to exact area which is sought in prayer clause (e) in the plaint. However merely because particular area is specified in the prayer, the same would not mean that the tenant will have to pay court fees on the basis of valuation of the entire permanent alternate accommodation.

12. Reliance of Mr. Panickar on the judgment of this Court in **Dr. G. V. Iyengar** (*Supra*) is of little assistance to his case. That case involved right of the Plaintiff therein to possess bungalow situated in Mumbai City. It did not involve the issue of rights and obligation between landlord and tenant. Therefore the judgment in *Dr. G. V. Iyengar* would have no application to the present petition.

13. Mr. Panikar has also relied upon judgment in *M/s. Indrakumar Resort Apartments* (*Supra*). In that judgment, this Court has held in paragraph No.15 as under

“15. There can be no gainsaying of the fact that when the Suit is not susceptible to monetary evaluation then the provisions of Section 6(iv) (j) would come into play. The enforcement of the statutory obligations under a statute would be one such situation where the Plaintiff would be entitled to value his Suit under Section 6(iv) (j) of the said Act. The question is whether in the instant case the Plaintiff is so entitled to value the Suit. Though ostensibly, as contended by the learned counsel for the Petitioners the Suit is filed for seeking enforcement of the MOFA obligations. As indicated above, except the valuation clause there is not a whisper in the plaint as regards the breach of the obligation by the Defendant imposed by Section 12 of the said Act. The prayers as noted herein above are revolving around the declaration sought in respect of the agreement in question in the present Suit which is both a negative and positive declaration. This is a case where most unusually a positive declaration is sought by the developer that a declaration be issued that he is ready and willing to comply with the obligations imposed by the agreement. Why such a declaration is sought therefore begs an answer. Hence though by way of prayer clauses (a), (b) and (c) the declarations both positive and negative are sought, it appears that the Suit has been essentially filed for recovery of the possession of the flat in question in each of the Suits from the Respondent who

is the Defendant in each of the Suits. The said reliefs are sought after the Plaintiff has terminated the agreements in question in each of the suits. How the possession of the flat was handed over to the Defendant without he making payment, therefore, begs an answer. The said fact by itself casts a suspicion on the nature of the transaction entered into by the Plaintiff and the Defendant. It is impossible to believe that a party hands over the possession of the flat when payment is due from the flat purchaser. Be that as it may, the fact remains that the Plaintiff is seeking recovery of possession of the flat which is the subject matter of each of the Suits. The other is it seems are merely a ruse adopted by the Plaintiff to get the benefit of Section 6(iv) (j) of the said Act.”

14. Thus, the dispute in *Indarpuram Resort Apartment* involved recovery of possession of flat pursuant to termination of agreement. In that case as well, there was no issue of enforcement of any statutory rights between landlord and tenant. Therefore, the judgment in *Indarpuram Resort Apartment* has no application to the present petition.

15. Resultantly I do not find that any error is committed by the City Civil Court in rejecting Petitioner’s Chamber Summons. Writ Petition, being devoid of merit, is dismissed without any order as to costs.

SANDEEP V. MARNE, J.

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