

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1049 OF 2023

Amool Shivaji Rokade

...Appellant

V/s.

Tarun Mahendra Patel and Ors.

...Respondents

Dr. Abhinav Chandrachud, Mr.Dhanjay Gitre, Ms. Shaila Pathak, Mr. Aarti Dharamsen, for the Appellant.

Mr. Nirman Sharma i/by. Mehul A. Shah for Respondent Nos.1 and 2.

Mrs. Zenobia Irani, for Defendant No.7.

CORAM : SANDEEP V. MARNE, J.

DATED : 20 DECEMBER 2023.

P.C. :

- 1) The challenge in the present Appeal is to the Order dated 24 November 2023 passed by the City Civil Court allowing Notice of Motion No. 1747 of 2022 filed by the Plaintiffs/Respondent Nos.1 and 2. The City Civil Court has restrained the Appellant-Defendant from disturbing peaceful possession of the Plaintiffs over the suit property, from damaging, demolishing or affecting structure of the suit property,

disconnecting electricity and water supply, obstructing or preventing ingress and egress and from conducting business from the suit property.

2) It appears that Smt. Anandiben Patel was the tenant in respect of the suit premises. The Appellant-Developer has executed a Memorandum of Understanding dated 25 August 2015 with Smt. Anandiben Patel, under which the said Anandiben Patel was to be granted various benefits of redevelopment including allotment of alternate accommodation in the redeveloped building in lieu of her tenancy rights in the suit premises. Before execution of the Permanent Alternate Accommodation Agreement (**PAAA**) however, the said Anandiben Patel passed away on 17 September 2021. Plaintiffs claim tenancy rights in respect of the suit premises in their capacity as heirs of Anandiben Patel and on the strength of probate issued in their name, they claim that they are entitled to succeed in the tenancy of the suit premises. Additionally and without prejudice to tenancy claim, Plaintiffs contend that in their capacity as successors of Anandiben Patel, they are otherwise entitled to all benefits flowing out of the Memorandum of Understanding. Respondent No.7-landlady is contesting the claim of the Plaintiffs and has treated the Plaintiffs as trespasser in the suit premises. It appears that the landlady has instituted proceedings in the Small Causes Court seeking eviction of the Plaintiffs from the suit premises. It is landlady's contention that Plaintiffs have no rights in the suit premises.

3) The suit premises, alongwith the adjoining building, are taken up for redevelopment by the Appellant-Defendant No.1. He is unable to execute PAAA with the Plaintiffs on account of challenge to the rights of the Plaintiff in respect of the suit premises by the landlady. The predicament faced by the Appellant-Developer is that in absence of recognition of rights of Plaintiffs as tenants/successor of the suit premises, the Developer is neither able to execute the PAAA with them nor demolish the suit structure. The suit structure has thus created a hurdle in the entire redevelopment process, where the other tenants have vacated and are being paid transit rent by the Appellant-Developer. Now the Order of the City Civil Court granting injunction against the Appellant-Developer would further delay the process of redevelopment.

4. It has been repeatedly held by this Court that the process of redevelopment cannot result in dispossession of a person who is in possession of the old premises, until he/she is lawfully evicted. This Court has also held that the transit rent needs to be paid and alternate accommodation needs to be handed over to the occupier of old structure subject to final adjudication of disputes relating to title and/or possession. In the present case, Plaintiffs are undoubtedly in possession of the suit premises as of today. The nature of their possession is something which will be decided in proceedings between the parties. Whether they are tenants or trespassers is something which cannot be

decided as of today. The only question is whether the process of redevelopment can result in indirect eviction of the Plaintiffs from the suit property. The answer to this question would obviously be in the negative.

5. Since redevelopment process is likely to result in dispossession of the Plaintiffs who are admittedly in possession of the suit property, the Plaintiffs are entitled to receive transit rent from the Developer. Similarly, Plaintiffs are also entitled for execution of PAAA in their name in respect of the premises in their occupation. In the event, the landlady succeeds in proving that Plaintiffs are not tenants in respect of the suit premises and/or they are not entitled to any benefits flowing out of redevelopment, the landlady would be in a position to claim transit rent as per the PAAA as well as possession and title in respect of the permanent alternate accommodation. Therefore, the redevelopment process need not be stalled on account of pendency of proceedings between the landlady and the Plaintiffs.

4. In my view, the City Civil Court ought to have balanced the equities and ought to have ensured that the redevelopment process is continued so as to prevent inconvenience to the other tenants who have already vacated the premises in their occupation. The Order passed by the City Civil Court therefore needs modification.

5. I accordingly proceed to pass the following Order :

(i) The Order dated 24 November 2023 passed by the City Civil Court stands modified in terms of the present order.

(ii) The Appellant-Developer shall execute PAAA in the name of the Plaintiffs in respect of the suit premises in their occupation by agreeing to allot alternate accommodation admeasuring 2500 sq.ft. Carpet area in the newly constructed building. The Appellant-Developer has placed on record sanctioned plan on which the alternate accommodation, admeasuring approximately 2500 sq. ft. carpet area, for Plaintiffs has been demarcated in red hatched lines. The Plan is taken on record and marked 'X' for identification.

(iii) The Plaintiffs shall vacate the suit premises within two weeks from the execution of PAAA by the Appellant-Developer.

(iv) The Appellant-Developer shall start paying transit rent in respect of the suit premises to the Plaintiffs immediately upon vacation of the suit premises.

(v) Execution of PAAA as well as payment of transit rent in favour of the Plaintiffs shall be subject to the outcome of the proceedings pending between the landlady and the Plaintiffs with regard to the tenancy and/or other rights. The said proceedings, including the present Suit, shall be decided by the concerned Court without

being influenced any of the observations made by this Court in the present order.

(vi) All the contentions raised by the parties are left open.

6. With the above directions, the Appeal is **disposed of**.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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NEETA SHAILESH
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