

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 28 OF 2023

IN

INTERIM APPLICATION (L) NO. 27905 OF 2021

IN

SUIT (L) NO. 27898 OF 2021

Kandivali Heeraji Bhavan Co-operative
Housing Society Limited

...Applicant/
Plaintiff

Versus

Vision Land Private Limited & Ors.

...Defendants

Mr. Naushad Engineer a/w Mr. Sharad Bhansal i/by Mr. D.S. Jain for
the Plaintiff.

Mr. Mayur Khandeparkar a/w Mr. Kuber Wagle, i/by Purazar Fouzdar
for the Defendant Nos. 1 and 2.

Mr. C.J. Doveson for the Intevenor-Applicant in IA/27859/22.

Mrs. Rekha Rane, 2nd Asstt. to C.R. present.

CORAM : R.I. CHAGLA J

DATE : 13 February 2023

ORDER :

1. Court Receiver's Report No. 28 of 2023 has been placed
before this Court. The Court Receiver's Report has set out the
compliance with the order dated 21st July 2022.

2. The Court Receiver in compliance with the said order has taken physical possession of the suit building from the representative of the Defendant Nos. 1 and 2 by removing the security and labourers of the Defendants and handed over the Suit building to the Plaintiff society. There were 3 rooms, which were found locked on the 4th floor which by subsequent order dated 10th August 2022 the Court Receiver was directed to break open the lock and secure possession of these rooms, considering that there may be machinery, equipments lying in these rooms. Thereafter, by order dated 29th August 2022, the Applicant/Plaintiff society was directed to handover the possession of the three rooms on the 4th floor of the suit building to the Court Receiver.

3. The Court Receiver had fixed an appointment on 30th August 2022 for taking physical possession of the three rooms on the 4th floor of the suit building. The Court Receiver has taken physical possession of these rooms and submitted the site report to that effect. Three rooms whose possession were taken were found to be open and in vacant condition. These rooms also do not have any windows or toilets. They also do not have doors. Further, the three rooms do not have any electricity board or water supply. The representative of

Defendants Nos. 1 and 2 have arranged 3 new locks and accordingly, new locks have been fixed on the three rooms. The keys are in possession of the Court Receiver who has locked and sealed the three rooms in the presence of parties. The site Report dated 8th September 2022 has been annexed at Exh.D to the Court Receiver's Report.

4. Thereafter, a meeting was arranged by the Court Receiver on 30th November 2022 to identify the new developer with the help of the Plaintiff for constructing the suit building. At the meeting, the learned Advocate for the Plaintiff submitted a copy of the Minutes of Extra Ordinary General Body Meeting of the members of the Society held on 4th September 2022 and in the said meeting, the Society members unanimously voted in favour of K. Talsania Construction to carry out the incomplete work of the suit building. As per directions of the parties at the meeting held on 30th November 2022, the Registry called for the willingness of K. Talsania Construction to complete the project of the suit building. At a further meeting held on 8th December 2022, the representative of K. Talsania Construction was present and he submitted that they are ready and willing to develop the suit project and also ready to

execute the development agreement. A letter dated 5th December 2022 submitted by Mr. Punit Mithawala, the representative of K. Talsania Construction to the Registry on 8th December 2022, *inter alia* informing his readiness and willingness to complete the construction of suit building is appended to the Court Receiver's Report.

5. Accordingly, directions have been sought by the Court Receiver with regard to the steps to be taken in respect of appointment of K. Talsania Construction who is identified as new developer with the help of Plaintiff for further construction of the suit building. Further necessary directions are sought in respect of three rooms on the 4th floor which have been in physical possession of the Court Receiver, whereas the suit building has already been handed over to the Plaintiff society as Agent of the Court Receiver.

6. Mr. Naushad Engineer, learned Counsel appearing for the Plaintiff has submitted that in view of the Defendants failing to comply with the prior orders of this Court a suo moto contempt notice has been issued against them by order dated 21st July 2022 and Court Receiver has taken physical possession of the suit building.

Thereafter the Suit building has been handed over to the Plaintiff society as agent of the Court Receiver. Eventually a new developer K. Talsania Construction has been identified.

7. Mr. Engineer has submitted that this Court by order dated 8th December 2022 had considered the Interim Application filed by the original Defendant No. 2 and by which order, it was noted that this Court in the prior order dated 21st July 2022 was of the view that there was no hesitation in stating that the Defendants do not deserve any mercy of the Court. Further, it was noted that in allowing any reliefs in the Application as sought by Defendant Nos. 1 and 2 would in fact encourage disregard of a solemn undertaking given to this Court by them. Accordingly, the Interim Application has been dismissed. There is an Appeal filed from the said order dated 8th December 2022, which is pending.

8. Mr. Mayur Khandeparkar, learned Counsel appearing for the Defendant Nos. 1 and 2 has submitted that by keeping the rights and contentions of the Defendants in the Appeal (L) No. 40373 of 2022 preferred from order dated 8th December, 2022 open, the appointment of the new developer may be considered by this Court.

He has further submitted that the machinery and equipments which have been also noted in the site inspection report of the Court Receiver, are required to be handed over to the Defendant Nos. 1 and 2.

9. Having considered these submissions, it would be appropriate to issue the directions in the Court Receiver's Report by directing the Court Receiver to appoint K. Talsania Construction as the new developer of the suit building. The rights and contentions of the Defendant Nos. 1 and 2 Appeal of 2022 are kept open.

10. Three rooms on the 4th floor, possession of which has been secured by the Court Receiver shall be handed over to the Plaintiff Society for the purpose of development of the suit building by K. Talsania Construction.

11. The machinery, equipments which the Court Receiver has located at the site of the suit building is required to be handed over to the Defendant Nos. 1 and 2. In that context, the Court Receiver shall on 18th February 2023 at 11.00 a.m. together with the representative of the Defendant Nos. 1 and 2 as well as the

representative of the Plaintiff visit the site of the suit building and handover the machinery and equipments lying at the site to the Defendant Nos. 1 and 2 after making inventory of the equipments lying there.

12. Costs of the Court Receiver shall be deducted from the funds available in the Suit account.

13. Court Receiver's Report No. 28 of 2023 is disposed of accordingly.

14. Compliance report shall be filed by the Court Receiver on 27th February 2023 at 2.30 p.m.

[R.I. CHAGLA J.]