

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.558 OF 2024
IN
APPEAL FROM ORDER NO.1049 OF 2023

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Tarun Mahendra Patel & Anr.Applicants

IN THE MATTER BETWEEN

Amool Shivaji RokadeAppellant

V/S

Tarun Mahendra Patel & Anr.Respondents

...

Mr. Mayur Khandeparkar i/b Mr. Mehul A. Shah for the
Applicants/Respondent Nos.1 and 2.

Ms. Shaila V. Pathak for Appellant.

Mr. Zenobia Irani for Respondent No.7.

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CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 19, 2024.

P.C.:

1 The Interim Application is filed seeking modifications/clarifications of the order dated 20 December 2023 passed in Appeal from Order No.1049 of 2023.

2 Mr. Khandeparkar, the learned Counsel appearing for the Applicants/Original Respondent Nos.1 and 2 would submit that three clarifications/modifications are required in the order dated 20 December 2023.

3 Firstly he would submit that under provisions of section 91(5) of the Maharashtra Housing and Area Development Act, 1976 (**MHAD Act**),

a cessed structure cannot be demolished without first obtaining No Objection Certificate (NOC) from the Maharashtra Housing and Area Development Authority (MHADA). He would submit that clause 3 of paragraph 5 of the order dated 20 December 2023 contemplates vacation of the suit premises by Applicants before issuance of NOC by MHADA. I have gone through the provisions of section 91(5) of the MHAD Act. Apart from applicability section 91 it appears that the prohibition under sub section 5 of section 91 is on sanctioning of plans for construction of the building by the Municipal Corporation without MHADA's NOC. The prohibition is not for demolition of the structure. Therefore there cannot be any embargo of issuance of NOC by MHADA for the purpose of vacation of the premises of the Applicants. Therefore no clarification/ modification is required in respect of directions in para 5(3) of the order.

4 Secondly, Mr. Khandeparkar would submit that in the Draft Permanent Alternate Accommodation Agreement (**PAAA**) shared by the Developer, what is proposed to be granted is area less than 2500 square feet carpet contrary to direction of this Court. Ms. Pathak, the learned Counsel appearing for the Original Appellant (Developer) would fairly submit that necessary modifications would be effected in the Draft PAAA so as to provide for handing over of alternate accommodation admeasuring 2500 square feet carpet area to the Applicants. She would also submit that the PAAA would be in tune with Memorandum of Understanding (MoU) dated 25 August 2015 executed with Smt. Anandiben Patel.

5 The third clarification sought by Mr. Khandeparkar is with respect to payment of transit rent being made subject to the outcome of the proceedings. He would submit that so far no order is passed for ejectment of the Applicants from the suit premises and therefore Applicants were otherwise entitled to occupy the suit premises and in that view of the matter, the transit rent received by them cannot subsequently be directed to be refunded in any proceedings. He would rely upon the judgment of the Division Bench of this Court in ***Vipul Fatehchand Shah vs. Nav Samir Co-operative Housing Society*** in Commercial Appeal (L) No.25162 of 2023 decided on 6 October 2023 and as well as order passed by this Court in ***Shashidhar P. Nair vs. Randhir Harshadrai Joshi*** in Appeal from Order (Stamp) No.31520 of 2023 decided on 10 November 2023.

6 Ms. Irani, the learned Counsel appearing for Defendant No.7 would submit that there is no objection to the clarification with regard to the payment of transit rent subject to the condition that mere payment of transit rent to the Applicants should not prejudice the rights or claims of Defendant No.7 in any proceedings. Thus it is clarified that the payment of transit rent to Applicants shall not be subject to the outcome of any proceedings. But at the same time payment of transit rent to the Applicants shall not prejudice the rights and claims of Defendant No.7 in any of the proceedings.

7 With the above clarification, the Interim Application is disposed of.

(SANDEEP V. MARNE, J.)