

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17860 OF 2023

IN

APPEAL FROM ORDER NO. 727 OF 2022

Mrs. Shobha Umesh Shetty ... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr. ... Respondents

WITH

INTERIM APPLICATION NO. 17868 OF 2023

IN

APPEAL FROM ORDER NO. 469 OF 2022

Mr. Vasant Nanji Dedhia Prop.
M/s. National Chemist ... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr. ... Respondents

WITH

INTERIM APPLICATION NO. 17861 OF 2023

IN

APPEAL FROM ORDER NO. 728 OF 2022

Mr. Karman Rantanshee Nishar,
Thr. COA Mr. Champshi Bharmal Nishar ... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr. ... Respondents

WITH

INTERIM APPLICATION NO. 17866 OF 2023

IN

APPEAL FROM ORDER NO. 88 OF 2023

Mrs. Janakben Ramniklal Joshi ... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr.

... Respondents

**WITH
INTERIM APPLICATION NO. 17863 OF 2023
IN
APPEAL FROM ORDER NO. 733 OF 2022**

Mr. Rahul Nanji Dedhia,
Prop. of M/s. National General Store

... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr.

... Respondents

**WITH
INTERIM APPLICATION NO. 17833 OF 2023
IN
APPEAL FROM ORDER (L) NO. 29003 OF 2023**

Mr. Pradeep Premji Nandu
Prop. M/s. Nandu Stores
Tenant / Occupant and Ors.

... Applicant
Appellant

Versus

Municipal Corporation of Greater Mumbai
and Anr.

... Respondents

.....

Mr. Uday Bobde a/w. Ms. Madhuri Maisheri for Applicants.
Ms. Smita V. Tondwalkar for Respondent No.1 (BMC)
Mr. Mayur Kandeparkar a/w. Mr. Vikranjit Singh Garewal a/w. Mr.
Xecsesh Barucha i/b. M/s. Purnanand & Co. for Respondent No.2

.....

**CORAM : SANDEEP V. MARNE, J.
DATED : 12th MARCH 2024**

P.C. :-

1. These Interim Applications are filed seeking clarification of Order dated 6th October, 2023 passed by this Court by which Appeals were disposed of in view of the agreement expressed between the Appellant and Respondent No.2 therein. Under Clause (i) of the Order, the

Appellants and Respondent No.2 agreed to execute PAAA on same terms as executed with other tenants in respect of commercial structures for grant of permanent alternate accommodations within a period of two weeks from the date of passing of the order.

2. Mr. Bobde, the learned counsel for the Applicants would complain that the said agreement was on the basis of an understanding that had taken place between the parties vide email dated 22nd December, 2022, by which, the Respondent No.2 has agreed to accommodate these tenants in the commercial shops in the new building to be constructed at the same place where the current building Gopal Bhavan stands. However, when the Appellants received drafts of PAAA from Respondent No.2-Developer, they realized that Respondent No.2 has undertaken composite scheme for redevelopment of building Gopal Bhavan along with implementation of Slum Rehabilitation Scheme of the neighboring plot. He further submits that by way of draft PAAA, Respondent No.2 has now intended to accommodate the six tenants in respect of commercial shops in the building Crystal Midtown, which is being constructed at the rear portion of the lay out behind the land on which the building Gopal Bhavan is currently standing. According to Mr. Bobde, the Applicants are currently occupying their commercial premises on the main LBS Road and on account of PAAA, the Applicants would lose the advantage of road frontage. He would submit that the agreement expressed before this Court on 6th October, 2023 was premised on an understanding that the Applicants would be accommodated on the road frontage building.

3. Mr. Khandeparkar, learned Counsel for Respondent No.2, on the other hand would deny any such understanding between the parties at

the time of expression of agreement during the course of hearing on 6th October, 2023. He would submit that the Applicants were always aware about execution of a composite Scheme under DCR 33 (10) and DCR 33(14.D) He would submit that the Respondent No.2 -Developer has ensured that none of the Appellants would be accommodated in Rehab building constructed for slum dwellers. He would submit that the building Crystal Midtown, is also on a road which is an internal layout road. He would submit that Applicants otherwise, do not have any right to seek alternate accommodation on the same plot where their tenanted structures are currently located. He would submit that the Applicants are violating the Order dated 6th October, 2023.

4. Perusal of the Order dated 6th October, 2023 would indicate that parties did not agree upon a specific location where permanent alternate accommodations are to be granted to the Applicants. The Appeals arose out of rejection of application for temporary injunction filed by the Appellants in the suits challenging notices under Section 354 of the Mumbai Municipal Corporation Act, 1888. The remit of inquiry qua the notice under Section 354 is extremely narrow. The only right that a tenant is guaranteed under Sub-section 5 of Section 354 is re-induction as a tenant in the newly constructed building in respect of the same area which is occupied by him. This right of the Applicants is being protected. Additionally, instead of being re-inducted as mere tenants, they would be made owners in respect of alternate accommodations. Applicants did not make any grievance at the time of decision of the Appeals about the location at which alternate accommodations were offered to them by Respondent No.2 Developer. Therefore, by interim applications, the scope of appeals cannot now be

enlarged, that too after disposal of the appeals in view of the agreement that prevailed between the parties on 6th October, 2023.

5. This Court would not be in a position to decide the controversy about the location at which the Appellants can be granted permanent alternate accommodations in Interim Applications filed seeking clarification of the Order dated 6th October, 2023.

6. Interim Applications are accordingly dismissed.

7. After the order is pronounced, Mr. Bobde, learned counsel for the Applicants after taking instructions from his clients, who are present in the Court, would submit that each of the Applicants shall execute PAAA with the Developer within one week from today.

8. Respondent No.2 shall provide draft of PAAA to each of the Applicants by today evening. On or before 19th March, 2024, each of the 15 applicants shall execute and register the PAAA. Only those Applicants, who execute PAAA with the Respondent No.2-Developer, shall have time till 2nd April, 2024 to vacate the tenanted structure.

9. It is clarified that, if any of the Applicants fail to execute PAAA with Respondent No.2 Developer by 19th March, 2024, the Municipal Corporation shall forthwith proceed to vacate such occupant from his/her respective tenanted structure.

(SANDEEP V. MARNE, J.)