

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 63 OF 2024

Kushalraj Land Developers Pvt Ltd

.. Applicant

Versus

Shaila Madhukar Gore & Ors.

.. Respondents

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- Mr. Aadil Parshurampuriah a/w Mr. Ameya V. Khot i/by M/s. Legal Vision for the Applicant
- Mr. Vishal Kanade a/w Mr. Rohan Karande and Ms. Manasi Hirve i/by M/s. Divekar & Co for Respondent Nos. 1 & 2
- Mr. Abhijit Patil i/by Mr. Jagdish G. Aradwad (Reddy) for Respondent No. 3
- Mr. Pradeep M. Patil & R.Y. Sirsikar for Respondent No. 4 - BMC

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P. C.:

1. Heard learned Advocates appearing for the parties.
2. It is an admitted fact that the suit property has been demolished and redeveloped. Redeveloped building is ready along with occupation certificate (OC). Plaintiff (Applicant herein) has filed the Suit for multiple reliefs. Though certain reliefs are not amenable to the jurisdiction of the Civil Court, at this stage Court is not going to deal with the same.
3. After hearing Mr. Parshurampuriah and Mr. Kanade and perusal of pleadings, it is seen that the right of Plaintiffs to permanent alternate accommodation and any such entitlement as to whether

Plaintiffs would be entitled to one unit or more than one unit in view of the dichotomy of Plaintiffs having occupied the old structure bearing Room Nos. 3 and 3A will have to be determined in the Civil Suit. To that extent undoubtedly there cannot be any quarrel that the Plaintiffs are entitled to permanent alternate accommodation, but to what extent will be determined in the suit proceedings. Though Mr. Parshurampuria has expressed reservation on the basis of certain Government Resolution and would contend that even if Plaintiffs succeed in the suit proceedings, they would still have to approach the Competent Authority for the purpose of their entitlement to have a demarcation or apportionment of their old structure to claim two new redeveloped flats instead of one. Be that as it may what is crucial for the Plaintiffs is to ascertain their substantive right of entitlement. Ultimately it would be the learned Trial Court which will decide the same in accordance with law.

4. Both learned Advocates have taken me through the prayer clauses in the Suit plaint. It is seen that the only prayer clauses in the Suit plaint which would indeed survive before the Civil Court are prayer clauses D(3) to D(6). In so far as the other prayers are concerned, both Advocates agree that they shall not press or agitate the same before the Trial Court. I am also informed that the redeveloped building is fully ready with OC granted but at the instance

of Plaintiffs, there is embargo on the developer to sell the resale component. In so far as all original occupants of the old building are concerned, they have all been inducted into their respective flat premises, save and except the Plaintiffs who are Respondents before me. In that view of the matter, if the Suit proceedings are directed to be expedited by keeping all contentions of both sides expressly open, it will resolve the issue faster.

5. In view of the above, learned Trial Court is requested to dispose of L.C. Suit No. 1593 of 2015 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

6. While sustaining the impugned order, it is made clear that this Court has not expressed its imprimatur or opinion on any of the issues touching the merits of the matter in so far as entitlement of the Plaintiffs is concerned as also the submissions advanced by Mr. Parshurampuria.

7. All contentions of both parties are expressly kept open.

8. Learned Trial Court shall not be influenced by any of the observations and findings in the impugned order and shall determine the Suit strictly on merits and in accordance with law.

9. With the above directions, Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

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