

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6255 OF 2024

Dhananjay Vishnu Kulkarni

.. Petitioner

Versus

Shubhangini Arvind Joshi & Ors.

.. Respondents

.....

- Mr. Pravin Dabade a/w Mr. S.N. Chandrachud for Petitioner
- Mr. Ahmed Padela i/by The Law Point for Respondent No. 1
- Mr. V. Mannadiar a/w Ms. Sanika S. Wabale i/by Mannadikar & Company for Respondent No. 4

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 7, 2024

P. C.:

1. After hearing learned Advocates appearing for the parties and perusing pleadings in the present case, by consent of parties following order is passed:-

2. The Petitioner and Respondent Nos.1 to 3 who are brother and sisters respectively and parties in the Partition Suit being Special Civil Suit No.1238 of 2015 pending in the Court of the Civil Judge Senior Division Pune have as an interim measure pending the final adjudication of the said Special Civil Suit, agreed to the following Interim Arrangement limited only for the purpose of the Redevelopment of the property belonging to Respondent No.4 Society.

3. The arrangement arrived at hereunder is without prejudice to the rights and contentions of the parties to the Special Civil Suit No.1238 of 2015 being the Petitioner and the Respondent No.1 to 3 herein.

4. The Petitioner hereby undertakes not to claim any equities or advantages by virtue of these Minutes. All contentions between the Petitioners and the Respondents 1 to 3 are kept open.

5. One of the properties claimed to be part of the estate of Late Vishnu Kulkarni in respect of which the Partition Suit (Special Civil Suit No.1238 of 2015) is filed is Flat No.12 on the ground floor of "Sahakar Sahavaas" Building (said flat) belonging to the Sahakar Sahavaas Co-operative Housing Society Limited (said Society), Ramkrishna Chemburkar Marg, (Ghatkopar, Mahul Road). The said Society is in the process of getting the said building redeveloped.

6. Without prejudice to the rights and contentions of the parties and without creating any equities, the Petitioner and Respondent Nos.1 to 3 agree that the Petitioner herein i.e. Dhananjay Vishnu Kulkarni, shall be permitted to sign all documents related to the redevelopment and hand over possession of the said flat to the Society and or the Developer as the case may be alongwith all other members

of the Society after notice to vacate the said building is given by the Developer

7. The Petitioner and Respondents 1 to 3 further agree and declare that since the Petitioner is presently in possession of the said flat, he shall be entitled to the transit rent and shifting allowance that will be paid by the Developer to all the existing members of the Society as per the Development agreement from the date of his vacation and handing over of the flat till the date of notice to take possession of the redeveloped flat. The notice to take possession shall be given to the Petitioner by the Developer after redevelopment. However, such benefits of transit rent, shifting allowances which shall be recieved by Petitioner shall be subject to the decree passed in the said pending suit and as per the rights determined therein and all benefits which may accrue qua the said flat shall vest and stand transferred to the parties / party as per the judgment and order of the Honourable Trial Court in the said suit proceedings.

8. The Petitioner and Respondents 1 to 3 also agree that the corpus and any other benefit accruing as a result of redevelopment in respect of the said flat shall be paid by the Developer to the Society who shall deposit the same in a fixed Deposit Receipt against the said flat. The said amount with accrued interest shall be renewed from time to time

by the Society and shall be paid over as decided by the Honourable Trial Court in Special Civil Suit No.1238 of 2015.

9. The Redeveloped flat (which shall mean to include additional benefits including but not limited to additional FSI qua the said flat), if completed after the decision of the Trial Court shall be handed over by the Society / Developer to the Petitioner or the Respondents 1 to 3 or such of them as per the decision of the Honourable Trial Court in Special Civil Suit No.1238 of 2015 and the said additional benefit in form of additional flat(s) shall be earmarked appropriately for partition as per the Judgment and Decree of the Trial Court. If the redeveloped flat is handed over prior to the final decision in the above Suit, it shall be handed over to Petitioner and he shall hold the new flat in the same capacity as on date until the decision by the Trial Court in the Suit and shall abide by the same.

10. The Petitioner further agrees and declares that any benefit accrued qua the said flat in view of the redevelopment shall be subject to the final outcome of the judgment and decree of the said Honourable Trial Court. The benefits as mentioned herein include but are not limited to additional area, additional flat, car parking etc.

11. The Petitioner and Respondent No. 4 agree and undertake to share with the Respondents 1 to 3 and with each of them all the

documents, papers, circulars, notices from the Society and the Developer who is redeveloping the Society that he has received till date (in reference to redevelopment of the society and Flat No.12 in the said society) within a period of 7 (seven days) from the date of this order and the Petitioner further agrees and undertakes to share with all Respondents all documents, papers, circulars, notices that the Petitioner may receive from the Society and the Redeveloper within 7 (seven) days from the date of such receipt thereof by him.

12. The Petitioner, Respondent No. 4 and the Society agree and undertake not to create any third party interest or any encumbrances on the said flat or the new redeveloped flat or any benefits arising from redevelopment and they all shall abide by the final decision in Special Civil Suit No. 1238 of 2015.

13. The Petitioner and the Respondents 1 to 3 agree and undertake not to interfere in the redevelopment process of the Society.

14. Considering that the Suit is pending since 2015, learned Trial Court is directed to decide Special Civil Suit No. 1238/2015 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 exigency.

15. All contentions of the parties are expressly kept open.

16. Writ Petition is disposed in the above terms.

[MILIND N. JADHAV, J.]

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RAVINDRA
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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.08.07
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