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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8140 OF 2024

Baburav Chandrakant Aeer and Ors.

.. Petitioners

Versus

Chandrakala Chandrakant Naik and Ors.

.. Respondents

-
- Ms. Namrata N. Shenoy i/by Ms. Priyanka J. Mahadeshwar Advocate for Petitioners.
 - Mr. S.B. Talekar i/by Talekar & Associates for Respondent No.3 through VC.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 11, 2024.

P.C.:

1. Heard Ms. Shenoy, learned Advocate for Petitioners and Mr. Talekar, learned Advocate for Respondent No.3 through VC. Perused the impugned order dated 17.06.2023 which is at Exhibit “C” – page No.54 of the Writ Petition.

2. At the outset, Mr. Talekar would submit that the private dispute between the warring Respondents in respect of their claim and entitlement needs to be considered and decided so as to enable MHADA to take appropriate decision in respect of the subject premises which is a MHADA flat.

3. After hearing Mr. Talekar and perusing the impugned order, I am inclined to hear the Respondents who have obtained the

impugned order in their favour which is appended at Exhibit “C” - page No.54 of the Writ Petition. On the aspect of possession when asked, the Advocate for the Petitioners would submit that Writ Petitioner was at that time displaced by the Respondents and they obtained forcible possession of the MHADA flat. However, Writ Petitioners claim to be in possession of the Suit flat.

4. In that view of the matter, Respondents shall be served with a copy of the Petition and this order.

5. Hence, issue notice to the Respondents. Humdast permitted. Mr. Talekar, learned Advocate waives notice for Respondent No.3.

6. In addition to Court notice, Petitioners are permitted to serve a copy of the Writ Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

7. Respondents are directed to file Affidavit-in-Reply and inform the Court about present status of the MHADA flat and their status of possession.

8. On the next adjourned date, after hearing the Respondents, this Court shall pass appropriate further order in the matter.

9. Ms. Shenoy would submit that copy of the present Writ Petition has already been served on the Respondents and Affidavit of service to that effect dated 11.06.2024 is tendered across the bar. Said Affidavit is taken on record. Hence in view thereof, since Respondents have already been served with the copy of the Writ Petition, copy of today's order shall be served on the Respondents and acknowledgment to that effect shall be shown to the Court on the next adjourned date.

10. If the Respondents are served today's order, they are directed to remain present on the next adjourned date either through themselves or through their Advocate.

11. If the Respondents do not remain present on the next adjourned date even after receiving service of today's order, this Court shall draw adverse inference and pass appropriate directions which may be detriment to the prospect of the Respondents. Hence, Respondents are directed to remain present on the next adjourned date.

12. In the meanwhile, Mr. Talekar is also directed to inform the Court on Affidavit as to whether MHADA has received any requisition either from the Petitioners or the Respondents with respect to transfer of the said MHADA flat in their name.

13. Ms. Shenoy would raise one more important issue and point out that the 'No Dues Certificate' given by the Society in favour of

Respondent Nos.1 and 2 has been tampered with by the Respondents and a copy of that tampered document is appended at page No.83 of the Writ Petition. She would submit that the original 'No Dues Certificate' issued by the Society in respect of subject MHADA flat is at page No.82 of the Writ Petition.

14. According to Petitioners, Respondent Nos.1 and 2 have stated in the tampered document that the Society has no objection if the subject MHADA flat is transferred to their name. If this tampering is indeed done by Respondent Nos.1 and 2 which is clearly visible to the naked eye, this Court shall pass strictures against them after hearing them. Respondent Nos.1 and 2 are therefore directed by this Court to file an appropriate Affidavit so as to enable this Court to pass orders as to who has been instrumental in tampering with the document which is appearing at page No.83 of the Writ Petition issued by the Society.

15. Respondent Nos.1 and 2 are directed to take cognizance of the 'No Dues Certificate' of the Society which is appended at page No.82 of the Writ Petition. This document is the original issued by the Society. This Court shall take strict action against the Respondents, if they have inserted unnumbered paragraph No.2 in the said letter of the Society. Respondent Nos.1 and 2 are directed to file Affidavit-in-Reply on or before the next date. Copy of the same shall be served on

the other side in advance.

16. Stand over to 18th June, 2024.

[MILIND N. JADHAV, J.]

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Date: 2024.06.12
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