

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

APPEAL FROM ORDER NO. 401 OF 2024

Rafeeqe Kaniyattil And Others
Versus
Municipal Corporation Of Greater
Mumbai And Others

...Appellants
...Respondents

Ms Nidhi Chauhan i/b. Mr. Vishwanath Patil for the Appellants
Mr. R. Y. Sirsikar for the Respondent Nos. 1 and 2-BMC
Mr. Prathamesh Kamat (through VC) i/b. S. N. Juris for the Respondent
No. 3
Mr Gauraj Shah (through VC) a/w. Mr. V. A. Joshi i/b. Chitnis Vaithy and
Company for the Respondent No. 4.

CORAM : M. M. SATHAYE, J.

**DATED : 29 MAY 2024
(Vacation Court)**

PC.:

1. Heard learned Counsel for the parties.
2. The Appellants, 5 in number, are challenging the order dated 10.05.2024 passed by the City Civil Court, Dindoshi in Notice of Motion (Stamp) No. 4170 of 2024. The order annexed to the Appeal shows that for the reasons separately recorded, the ad-interim relief claimed in prayer clause (a) of the Notice of Motion is refused.
3. The prayer clause (a) of the Notice of Motion seeks directions to the Municipal Corporation to strictly adhere to the guidelines issued by the

Corporation for implementation of the notice issued u/s. 354 of the Mumbai Municipal Corporation Act, 1888. The Appellants are members of the Respondent-Society, who have been issued notice by the BMC because society structure is in dilapidated condition having been classified as C-1 category.

4. Learned Counsel for the Respondent-Developer states that as per the development agreement executed by the Respondent-Society, the Permanent Alternate Accommodation (for short “the PAAA”) Agreement can be executed only after IOD is obtained, which stage has not yet come. He states on instructions that the developer is ready to undertake to the Court that as soon as IOD is obtained, the developer will abide by the development agreement, which includes execution of PAAA agreement with the Appellants.

5. Learned Counsel for the Respondent-Developer and learned Counsel for the Respondent-Society have pointed out that in respect of the same Respondent - Society viz. Kailash Prabhat Co-operative Housing Society Ltd, Vidya Nagari Colony, Santacruz (E), in Appeal from Order No. 331 of 2024 alongwith Interim Application No. 7947 of 2024, filed by 23 other members of the same society, this Court has declined to grant interim relief in favour of those members, in identical circumstances, specially considering the same

fact of subject matter structure being in dilapidated condition classified as C-1 category.

6. Considering the aforesaid facts and circumstances, it is not possible to take any different view in respect of the Appellants, at this stage. In light thereof, no urgent relief can be granted at this stage.

7. However, the Appellants are at liberty to move before the regular Court since willingness is already shown by the Respondent–Developer for execution of the PAAA after obtaining IOD.

8. All concerned to act on authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)