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

**APPEAL FROM ORDER NO. 721 OF 2024
WITH
INTERIM APPLICATION NO. 13863 OF 2024**

Jaimin Shailesh Shroff	...Appellant
Versus	
Sukesh Arvind Shastri & Ors	...Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Abhishek Upadhyay for Appellant.
Ms. Sumandevi Yadav for Respondent Nos. 1 to 7.
Ms. Seena Rawade for Respondent-MCGM.
Mr. Swapnil Bangar a/w. B. K. Gala, for Respondent No.9.
Ms Riddhi Shah for the Respondent No. 11.

CORAM : M. M. SATHAYE, J.

DATED : 18th DECEMBER 2024

P.C.:

1. Heard learned Counsel for the parties. The matter is taken up for disposal. For the purpose of clarity, earlier orders passed in this Appeal are reproduced below.

2. On 26/11/2024, following order was passed:

“1. This matter was urgently moved in view of notice dated 25.11.2024 issued by Respondent Corporation for disconnection of water supply, electricity and gas connection on 26.11.2024 i.e. today. Learned counsel for the Respondent Municipal Corporation submitted on instructions from the concerned officer, that electricity and water connection to the subject matter structure is already disconnected today.

2. Learned counsel for the Appellant placed on record a letter

dated 24.11.2024 issued by Respondent No. 9 Developer to the occupants and submitted that the said letter clearly indicates that a joint measurement was already scheduled for tomorrow i.e. 27.11.2024 at 10.00 a.m. and even then, the water and electricity supply has been disconnected.

3. Learned counsel for the Appellant and learned counsel for the Respondent Nos. 1 to 7 (occupants/tenants of subject matter structure) however undertake on instructions from their clients that tomorrow they would co-operate with the measurement scheduled by Respondent No.1 Developer.

4. In the aforesaid circumstances, in order to afford an opportunity to the occupants/tenants to co-operate with the measurement and take the development forward, let the measurement be carried out tomorrow at 10.00 a.m. as proposed.

5. Stand over to 27.11.2024, tomorrow at 2.30 p.m. for further hearing”

3. Thereafter, on 27/11/2024 following order was passed:

“1. At the outset, it is clarified that appearance shown for Respondent No. 3 in yesterday’s order dated 26.11.2024 be treated as appearance for Respondent No.9.

2. Heard learned counsel for the Appellant and learned counsel for Respondent Nos.1 to 7 who collectively represent the tenants in the suit structure - Satyabhama Niwas (building Nos.1 & 2). Also heard learned counsel for Respondent No. 9, who categorically states that Respondent No.9 is 80% owner of the subject matter land along with structure thereon. Heard learned counsel for Respondent No.8-Municipal Corporation.

3. This appeal is filed challenging the order dated 01.10.2024 passed by Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Notice of Motion No. 2986 of 2024 in L.C. Suit No. 1329 of 2023. By the said impugned order, ad-interim relief is refused. Motion is pending for hearing.

4. By the said motion, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs) are praying to restrain the Respondent-Corporation from

implementing notice dated 26.08.2024 and to restrain it from disconnecting water and electricity supply to the suit structure.

5. It is already recorded in the order passed by this Court yesterday that the Respondent-Municipal Corporation had already disconnected the electricity and water supply before the matter was heard. However, pursuant to said order, today morning, the measurement of the areas in possession of respective Plaintiffs has been carried out in joint measurement between the Plaintiffs / tenants as well as Respondent No.9. The measurement report is yet to be issued.

6. Learned counsel for the parties have placed on record certain photographs of the suit property including those taken during the measurement.

7. Learned counsel for Respondent No.9, on a query by the Court about the execution of PAAA agreement or any other agreement, submitted that since Respondent No. 9 is only 80% owner of the subject matter land and structure, it is not in a position to make positive statement about execution of PAAA and also because its dispute with the owner of remaining 20% share in the subject matter land and structure is pending in another litigation.

8. Learned counsel for the Appellant submits that there are documents on record including correspondence entered by Respondent No.9 with the tenants/Plaintiffs claiming to be owner of the subject matter property and asserting that in case of any problem in future about 20% share in the subject matter property, the responsibility of remaining 20% share holder is upon Respondent No.9. It is noted that a letter relied upon by the Plaintiffs is of 06.04.2022. In essence, what is submitted by the Plaintiffs is that on the representation of Respondent No. 9, rents have been tendered to Respondent No.9.

9. Learned counsel for Respondent No.9 has fairly suggested that in the given circumstances of the case, Respondent No.9 is ready if the owner of remaining 20% share in subject matter property is impleaded in the present appeal from order as well as the suit and is called upon to appear before the Court. He however, further submitted that the financial and other viability of the development will have to be considered independently but occupation of the Plaintiffs can not continue in perpetuity, considering the condition of the suit structure and earlier record of

the dispute.

10. Perusal of the plaint shows that the Plaintiffs have prayed for safeguarding the rights of the Plaintiffs by directing Defendant Nos. 2 & 3 (present Respondent Nos.9 & 10) to execute necessary documents such as agreement for permanent /temporary alternate accommodation before suit structure is pulled down. Perusal of the plaint would show that the Plaintiffs have made Respondent No. 9 as well as Municipal Corporation parties. However, as submitted by their advocate, for lack of detail knowledge, the owner of the 20% share in the subject matter property is not made party. He however, submits that Plaintiffs are ready to join the said party in the suit and in this appeal from order.

11. It is noted that the report of the area measurement is yet not on record and will be required to be verified by both the sides before the matter can be considered further.

12. Learned counsel for Respondent No. 9 is directed to supply the address of Ms. Nayna Jaykar who is stated to be 20% owner in the subject matter property. Upon such supply of details, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs - tenants) undertake to make her party in the subject matter suit as well as in the present Appeal from Order. Necessary amendment to be carried out in this appeal on or before 29.11.2024. After amendment is carried out, **issue notice to the added Respondent**, returnable on **10.12.2024**. In addition to Court notice, private notice is permitted.

13. Considering that the measurement has already taken place and the 80% owner of the subject matter property has shown willingness to explore the possibility of redevelopment in the presence of owner of remaining 20% subject matter property in this Court, the Appellant and Respondent Nos. 1 to 7 i.e. Plaintiffs / Tenants cannot be expected to live without electricity and water supply. However, considering the record, especially order dated 20.06.2024 passed by this Court, as also the fact that there were conflicting structural audit reports and TAC Committee has opined that the suit structure is of C-1 category, the Appellant and Respondent Nos. 1 to 7 (Plaintiffs / Tenants) are directed to file written undertaking in this Court on or before 29.11.2024 stating that they will occupy the suit structure at their own risk and the owner or Municipal Corporation will not be held responsible in case of any mishap.

14. Upon filing such undertaking by the Plaintiffs, the Respondent Municipal Corporation shall reconnect the water and electricity supply to the suit structure.

15. Stand over to **10.12.2024 at 2.30 pm**, for further consideration.

16. All concerned to act on duly authenticated or digitally signed copy of this order.”

4. On 10/12/2024, following order was passed.

“1. Heard learned counsel for the for the parties. Office note shows that the notice issued to Respondent No.11 (added party) is awaited.

2. Learned counsel for the Respondent No. 9 submits that so far as 80% share in the subject matter land is concerned, it is already conveyed to Respondent No.9 by deed of conveyance dated 19.11.2020, however the aspect of purchase/conveyance of remaining 20% share is pending in S.C. Suit No. 340 of 2022 in City Civil Court at Dindoshi, under agreement of sale dated 31.10.2011 between Respondent No. 9 and the legal heirs of Mr. Subhash Balram Jaykar. The said details, as submitted by the learned counsel for Respondent No. 9 are noted.

3. It is further submitted that as per para 11 of the earlier Order dated 22.11.2024, the area measurement has been received by both the sides and they will verify the same.

4. Learned counsel for the Appellant insists that Respondent No. 9 can still execute PAAA agreement to the extent of 80% ownership of the land. However, I am afraid that the scope of the present Appeal from Order cannot be extended to include the dispute between ‘the Appellant and Respondent Nos.1 to 7’ on one side and ‘Respondent No.9 - 80% owner’ on the other side, because the suit is basically filed challenging the notice dated 26.08.2024 issued by Respondent – Municipal Corporation.

5. Having reached this stage where the measurements is complete, now, the impugned order will have to be considered to the extent of rejection of ad-interim relief under the impugned Order.

6. The Appellant is at liberty to make fresh efforts to serve

added Respondent No.11 on or before the next date.

7. Stand over to 18.12.2024 at 2.30 p.m.”

5. As can be seen from what is recorded above, it is already indicated by this Court that consideration is now limited to the legality of the impugned order and rejection of the ad-interim relief under the impugned order.

6. Today, learned Senior Counsel for the Appellant submitted that the measurement carried out pursuant to the first order of this Court, of the tenements in possession of the Appellant and the Respondent Nos. 1 to 7, was not a joint measurement and it was conducted by two different agencies, one of the Appellant and the Respondent Nos. 1 to 7 and other of the Respondent No. 9 i.e. M/s. Arham Developers and Contractors. He has handed over the chart showing tenement wise difference in areas, which is essentially difference in measurement by the Respondent No. 9 and by the tenants.

7. The correctness of the measurement is not the subject matter before this Court and therefore the tenants as well as the Respondent No. 9 are at liberty to approach appropriate higher officer of the Municipal Corporation for resolving the issue about differences in the measurement. Especially so, because the learned Counsel for the Respondent-Corporation has taken a stand that area statement is already prepared based on assessment record available in respect of the suit building. Learned Senior Counsel for the Appellant asserts that physical measurement has not been taken by the officers of the Respondent- Corporation, which is required under the applicable guidelines. He further makes a grievance that according to the tenants, the area statement was prepared as per information supplied by the Respondent No. 9.

8. Indeed, it can be seen, as pointed out by learned Senior Counsel for the Appellant, that area statement relied upon by the Respondent–Corporation itself (page 212 of appeal paperbook) indicates that areas are certified only on the basis of area statement submitted by the C.A. to the owner M/s. J.N. Jaykar & others, Ashok N. Jaykar & Others, without verifying any authorization of structure under reference and as per assessment record.

9. It is therefore clarified that the tenants as well as the Respondent No. 9 are at liberty to approach the higher officer of the Municipal Corporation not below the rank of Deputy Municipal Commissioner for resolving the difference between measured areas.

10. That brings the Court now, to considering the impugned order. By the impugned order, ad-interim relief is rejected after recording that the subject matter structure is C-1 category and is required to be pulled down as soon as possible considering the safety of the structure and its occupants. After considering the reasons mentioned in the impugned order, in my view, no fault can be found with the refusal of the ad-interim relief, especially considering of the condition of the suit structure as certified by Technical Advisory Committee (TAC) classifying it as C-1 category. Refusal of ad-interim relief under impugned order is confirmed.

11. The Appellant and the Respondent Nos. 1 to 7 have already filed affidavits undertaking that they are occupying the suit building at their own risk. Considering the overall facts and circumstances, the Appellant and the Respondent Nos. 1 to 7 are given time till 16.01.2025, as a last chance, to vacate the suit building and that too, on specific written undertakings to that effect, being filed within a period of one week from today. It is clarified that

if the suit building is not vacated on or before 16.01.2025, the Respondent–Municipal Corporation is at liberty to take appropriate steps as per the suit notice. The undertakings will state that irrespective of the areas arrived at by the Respondent – Corporation, the Appellant and the Respondent Nos. 1 to 7 will vacate the suit building on or before 16.01.2025.

12. It is clarified that rights of the Appellant and the Respondent Nos. 1 to 7 (Tenants) as provided under section 499(3) to 499(6) with explanations as well as under Section 354(3) to 354(5) with explanation, of the Mumbai Municipal Corporation Act, 1888 remain unaffected by this order, even after they vacate the suit building.

13. Lastly, learned Counsel appearing for the Respondent No. 11 i.e. the added party, disputes that the rights of the Respondent No. 11 are limited to 20% over the suit property, as sought to be contended before the Court. Learned Counsel for the Respondent No. 9 disputes this position and states that the dispute between the Respondent Nos. 9 and 11 is already pending in Civil Court under a separate proceeding. Since, the rights *inter-se* between the Respondent No. 9 and 11 are not subject matter of this Appeal, no further comments are necessary. Suffice it to say that this Court has not considered their dispute *inter se* and all contentions between Respondent Nos. 9 and 11 are kept open to be agitated before the appropriate Court in appropriate proceedings.

14. The Appeal from Order and pending Application **are disposed of in above terms.** No costs.

(M. M. SATHAYE, J.)