

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 57 OF 2024
IN
WRIT PETITION NO. 1386 OF 2023

Vaishali Natwarlal Shah & Anr ...Applicants
In the matter between
Vaishali Natwarlal Shah & Anr ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Karl Tamboly, *with Karan Bhide, Mona Bhide and Kartikay Kaushik, i/b Dave & Girish & Co, for the Applicant/Petitioner.*
Mr Kaustubh Thipsay, *for Respondents Nos. 5 & 6.*
Mr Kunal Waghmare, *for the Respondent-BMC.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 4th April 2024

PC:-

1. The Petition can be disposed of with the following order.

2. The Petitioners represented by Mr Tamboly and Respondents Nos. 5 and 6 represented by Mr Thipsay have, after several rounds of discussions in Court agreed that no reasons are necessary and

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that the following order sufficiently protects the interest of both sides..

3. Respondent No. 5 is a Trust. Respondent No. 6 is a Trustee. Since Respondent No. 5 is a Trust, we obviously cannot take on record consent minutes or consent terms at least not without a supporting resolution of the Trust. This order is, therefore, in invitum but in the context that we have noted above.

4. The dispute, just by way of background, is in relation to a particular space called a garage for car parking in a building formerly called Nusser House, Plot No. 20 at Opera House, CS No. 1498, Mama Parmanand Road, D Ward, Mumbai 400 004. The building was originally tenanted. It was a ground and four upper floor structure. There were 11 tenants. There is a case in the papers that what the Petitioner claims as a garage was originally a store room. This may not matter much in view of the order that is being passed today.

5. There was also a second level dispute about whether the Petitioners were entitled to continue in garage/store room or whether Respondent No. 6 was entitled to that space.

6. Subject to paragraphs 7 to 12 below, Respondents Nos. 5 and 6 have agreed that they will allot in favour of the Petitioners a unit yet to be identified by number in the redeveloped building but which will, it is agreed, admeasure no less than 594.69 sq ft carpet area on the first habitable floor of the building being redeveloped by

Respondent No. 5 under DCPR 33(7)(A) of the DCPR 2034. This entitlement is presently given to Trafalgar Investments Co Pvt Ltd.

7. Possession of the unit in question, again subject to what follows, will be given to the Petitioners once the redevelopment is complete and an Occupation Certificate (“OC”) is obtained. This is expressly without prejudice to the rival rights and contentions including the contention of Respondent No. 5 that the Petitioners do not have any right or entitlement to that unit.

8. It is further agreed that the possession of the Petitioners of this redeveloped unit on the first habitable floor will be subject to the outcome of proceedings that may be instituted by Respondents Nos. 5 and 6 against the Petitioners inter alia regarding the rights claimed by the Petitioners in the present Petition about the garage that was said to be occupied by the Petitioners before it was demolished.

9. For obvious reasons, this aspect of the institution of proceedings cannot be left open-ended and it is agreed that such proceedings, if any, must be instituted in a jurisdictionally competent court within one year from today.

10. If such proceedings are indeed instituted as stated above, the Petitioners agree and undertake not to claim any equities on the basis that they have been put in possession of that unit pursuant to this order.

11. Possession will not be denied on the ground that the suit has been instituted. We clarify that the continuance of possession is subjected to order in that suit to be instituted by Respondents Nos. 5 and 6. The Court before which the suit is brought will necessarily have to address the question of whether the Petitioners are entitled to continue in possession or whether it is Respondent No. 6 or Trafalgar Investments Co Pvt Ltd or some other entity that is entitled to possession.

12. Mr Tamboly on behalf of the Petitioners readily makes a statement which we accept as an undertaking to the Court that until such a suit is instituted within the time period mentioned above, the Petitioners will not attempt to create any third party rights, encumbrances or other rights of whatsoever nature in respect of the premises to be allotted.

13. For such independent proceedings, the rights and contentions of the parties are expressly kept open. We further clarify that we have not ourselves address the rival contentions on merits in the present Petition.

14. All undertakings given by parties are accepted as undertakings to the Court.

15. The Writ Petition is disposed of in these terms.

16. Liberty to both sides to apply should the need arise. Pending Interim Application is infructuous and disposed of in these terms.

17. For obvious reasons, we cannot make an order requiring the execution of a Permanent Alternate Accommodation Agreement (“PAAA”) today. That will necessarily depend on the outcome of the proceedings of the suit to be filed by Respondents Nos. 5 and 6. If that suit is decreed in favour of Respondents Nos. 5 and 6 then obviously no question of continued possession or of a PAAA will ever arise. If the suit is dismissed, conversely, then there will be a requirement of execution of a PAAA and Respondents Nos. 5 and 6 agree that they will then execute PAAA and have registered the required PAAA.

18. The Writ Petition and the Interim Applications are disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)