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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 213 OF 2025
WITH
INTERIM APPLICATION NO. 6895 OF 2025**

Sayed Tabassum Parvin through her
constituted Attorney Sayyed Mohammed
Shakil Mohammed Sharif ... Appellant/Applicant

vs.

The Executive Engineer(E-2) Division, Mumbai
and Ors ... Respondents

Mr. Rajesh Kanojiya a/w. Mr. Arman Parus, Ms. Bushra Sayed i/b.

Ms. Pragya Mishra for Appellant/Applicant

Mr. P.G. Lad a/w. Mr. Paras Pawar for Respondent Nos. 1 and 2
(MHADA).

Ms. S.G. Talhar, AGP for Respondent Nos. 3 and 4-State.

Mr. Girish Godbole, Senior Advocate a/w Mr. Karl Tamboly a/w. Ms.
Aneesa Cheema a/w. Ms. Dipti Das a/w. Mr. Sunil A. Vyas a/w. Ms.
Shriya Nalawade i/b. Fox Mandal and Associates LLP for
Respondent No.5.

CORAM : GAURI GODSE, J.

DATED : 2nd APRIL 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is preferred by the original plaintiff to challenge the refusal to grant interim relief. The suit is filed by the appellant for the declaration that

the eviction order dated 14th February 2025 issued by defendant no.1, i.e. Executive Engineer, MHADA, in respect of the transit shop no. G-4 is illegal. The prayer in the plaint is also for a permanent injunction restraining the defendants from evicting the plaintiff from the transit shop premise no. G-4. The suit further prays for directions to defendant no. 5-Developer to hand over the plaintiff's rightful rehab shop in the newly erected building. In this suit, the plaintiff filed a notice of motion and prayed for a temporary injunction seeking prayer for restraining the defendants from taking any coercive action in terms of the order dated 14th February 2025. The order dated 14th February 2025 is passed by MHADA under Section 95A of the Maharashtra Housing and Area Development Act, 1976 ('**MHADA Act**'). By the impugned order, the notice of motion is dismissed.

2. Learned counsel for the appellant relies upon the internal noting dated 23rd November 2023 of MHADA, which, according to the plaintiff, was an approval by MHADA about granting shop no. G-4 as a transit accommodation. Learned counsel for the appellant further relies upon the letter dated 26th August 2024, issued by the Executive Engineer, MHADA, to the Divisional Engineer, BEST undertaking. He submits that even in the said letter, it is recorded

that Shop No. G-4 is allotted to the plaintiff as a temporary transit accommodation. Learned counsel for the appellant further submits that on 8th July 2019, a part occupancy certificate was issued for the ground upto the 21st part floor, excluding the society office and library and 22nd part upper rehab residential floor, excluding part of the fitness centre. He submits that the part occupancy certificate granted on 8th July 2019 includes the permanent alternate accommodation allotted to the plaintiff. He submits that shop no. 2 is the permanent shop allotted to the plaintiff.

3. Learned counsel for the appellant also relies upon the undertaking dated 17th July 2019 given by the developer. He submits that the developer had undertaken to provide transit accommodation till the rehab shop no.2 was given to the plaintiff. He further submits that the plaintiff is entitled to transit accommodation until the permanent alternate accommodation is allotted. He thus submits that the learned Judge of the City Civil Court has ignored all these documents and rejected the notice of motion.

4. Learned counsel appearing for MHADA points out the affidavit-in-reply filed in the notice of motion. He submits that the internal noting of MHADA relied upon by the plaintiff only concerns the communication received and recorded by MHADA. He submits

that the alternate accommodation is to be allotted by the developer and not by MHADA. He further submits that the noting does not refer to any allotment of the G-4 shop relied upon by the plaintiff as a transit accommodation.

5. Learned senior counsel appearing for respondent no.5 relies upon the judgment passed by the Division Bench of this court in the group of writ petitions filed by the occupants of the redevelopment project. He submits that the appellant was also one of the petitioners. He relies upon paragraphs nos. 16 to 19 of the judgment dated 8th September 2023. He submits that the Division Bench of this court has already recorded the willingness of the appellant and the developer regarding transit rent or alternatively to provide in the immediate locality a suitable area at the developer's cost. The order further records that the petitioner, i.e. the present appellant, must vacate the transit building. The order further directs that the appellant must be shown alternative premises, but if the same are not found suitable, the appellant will have to accept the transit rent that has been stated in the chart that is annexed to the order.

6. Learned senior counsel for respondent no. 5 submits that the amount, as referred to in the chart, is already deposited with MHADA. He further submits that pursuant to this order, the transit

premises occupied in the transit building was vacated by the appellant. However, the alternate transit accommodation shown to the appellant was not suitable according to the appellant; hence, she has refused to occupy the alternate transit accommodation. In view of the directions issued by this court, the appellant had the option to accept the transit rent. He submits that the G-4 shop claimed by the appellant was never allotted to the appellant.

7. Learned senior counsel for respondent no. 5 submits that the appellant has occupied the tin shed in the project, and she claims that it is the transit accommodation. He submits that nothing is produced on record to show that the tin shed is numbered as shop no. G-4, and it is part of any transit accommodation building. He submits that the area occupied by the appellant as G-4 in the project is causing a hurdle in the redevelopment. He submits that the alternate accommodation offered to the appellant was not accepted, and now, the same is not available. He further submits that in the absence of any authority to occupy G-4 as transit accommodation, the plaintiff/appellant would not be entitled to retain the structure, which is part of the redevelopment project. He, therefore, submits that the learned Judge of the City Civil Court has rightly refused to grant discretionary relief of injunction as prayed by the appellant.

8. Learned senior counsel for respondent no. 5 submits that there is no part occupancy certificate received, and thus, even if construction is complete, possession of the permanent alternate accommodation cannot be handed over at this stage. He submits that the document that is relied upon by the learned counsel for the appellant as a part occupancy certificate is a report and is not an occupancy certificate. He submits that it is only a report on the application for a part occupancy certificate, and according to the learned senior counsel for respondent no.5, the occupancy certificate has not yet been issued, which will include the shop to be allotted to the appellant as permanent alternate accommodation. Learned senior counsel for respondent no.5 further submits that the part occupancy certificate that is issued does not pertain to the shop to be allotted to the appellant.

9. A copy of the part occupancy certificate dated 10th November 2020, tendered by the learned senior counsel for respondent no.5 is taken on record. Learned senior counsel for respondent no.5 submits that the part occupancy certificate excludes all non-residential shops.

10. I have considered the submissions made by the parties and have perused the papers of the appeal. The order passed by the

Division Bench of this court has not been challenged and has attained finality. The relevant paragraphs of the judgment referring to the appellant's petition read as under:

“ WRIT PETITION (L) NO. 23998 OF 2022:

16. *The Petitioner in Writ Petition (L) No. 23998 of 2022 has many ration shops. We are concerned with only one that is in the transit building. It has not been vacated. A shop in rehab Building No.1 has been constructed but not yet allotted. Mr. Godbole states that the Petitioner is willing to pay transit rent or alternatively to provide in the immediate locality a suitable area at the developer's cost from which the Petitioner can carry on his ration shop business. We leave that choice to the Petitioner, but the Petitioner must vacate the transit building in any view of the matter.*

17. *As a general direction to all authorities concerned for all licenses including ration shops, establishments, etc, we direct that those authorities are to permit the Petitioner to temporarily conduct that ration shop business from the alternative premises that are offered and if accepted instead of transit rent. This is necessary because these licenses are usually specific to identified built premises. The licensing regime does not take into account such situations of temporary or transit relocation. It should not occur that the Petitioner is unable to conduct the ration shop business from the alternative premises.*

18. *Liberty to the Petitioner to apply if there is any difficulty in this regard with any licensing authority.*

19. *We direct that the Petitioner be shown alternative premises but if he does not find any of them suitable, he will have to accept the transit rent that has been stated in*

this chart that is annexed to this order.”

11. The directions issued by the Division Bench of this court direct the appellant to consider the suitable premises offered by the developer in the immediate locality. The directions further record that if the appellant does not find any of the alternate premises suitable, the appellant has to accept the transit rent that has been stated in the chart that is annexed to the order. A copy of the chart is annexed to the appeal compilation on page 87. The total amount deposited by the developer towards temporary transit accommodation is mentioned on page 280. Learned senior counsel for respondent no.5 on instructions submits that the amount towards rent for transit accommodation is deposited with MHADA upto March 2025. He, therefore, submits that in view of the directions issued by the Division Bench of this court, the appellant is at liberty to accept the transit rent and shift the shop to any premises as per her choice.

12. A perusal of the copy of the part occupancy certificate dated 10th November 2020, tendered by the learned senior counsel for respondent no.5 does not refer to the shop premises. Learned senior counsel for respondent no.5 is right in submitting that the part occupancy certificate excludes all non-residential shops. Hence, I

do not find any merit in the submissions made on behalf of the appellant that since permanent alternate accommodation is ready and an occupancy certificate is issued, she should be permitted to occupy the permanent alternate accommodation.

13. Learned senior counsel for respondent no.5 denies the appellant's contention that the permanent alternate accommodation is ready and is illegally occupied by a masjid. Nothing is shown by the learned counsel for the appellant that will support such an allegation.

14. Considering the directions issued by the Division Bench of this court, it is clear that if the appellant was unwilling to accept the alternate premises offered by the developer, the appellant was directed to accept the transit rent. The document, i.e. the internal noting of MHADA and the letter issued by the Executive Engineer regarding shop no. G-4 as transit accommodation cannot be termed as an allotment of transit accommodation to the appellant. The reply filed by MHADA does not acknowledge G-4 as any part of the transit building. The undertaking of the developer relied upon by the appellant refers to providing transit accommodation, but it does not refer to shop no. G-4 as transit accommodation.

15. Thus, in the absence of any prima facie document to indicate

that shop no. G-4 was allotted to the appellant as transit accommodation, the learned Judge of the City Civil Court has rightly refused to grant any interim relief. All the contentions raised by the appellant are dealt with by the learned Judge. The conclusion recorded by the learned Judge is based on the documents on record and refers to the directions issued by the High Court. Thus, the prima facie opinion expressed in the impugned order cannot be faulted. The grant of interim relief, which is a discretionary relief, is, thus, rightly refused by the learned Judge by recording reasons.

16. I do not find any illegality or perversity in the reasons recorded in the impugned order. The order considers all the basic principles for deciding the application for an interim injunction. The Division Bench of this court directed the appellant to accept the transit rent as per the chart annexed to the order. There is no dispute that the developer already deposited the rent amount before MHADA. Hence, I see no prejudice caused to the appellant if interim relief is refused. It is always open for the appellant to accept the transit rent and make appropriate arrangements for her shop in the area as per her choice.

17. If the appellant continues to occupy the G-4 shop as she claimed, it will definitely prejudice the redevelopment project, which

will affect the rights of other occupants who are entitled to permanent alternate accommodation. Hence, I see no reason to interfere with the reasons recorded in the impugned order.

18. The appeal is therefore dismissed. In view of the dismissal of the appeal, the pending applications in this appeal are disposed of as infructuous.

19. At this stage, learned counsel for the appellant insists that this court should record that the developer has handed over possession to other shop owners in the permanent alternate accommodation building. However, he is unable to show anything that will support such an allegation.

20. Learned counsel for the appellant requested an extension of interim relief for a period of two weeks. The extension of interim relief is opposed by the learned senior counsel for respondent no.5 on the ground that the appellant has stalled the redevelopment project, and thus, respondent no.5 is facing hardship, including financial losses due to the unauthorised occupancy of the appellant. However, to enable the appellant to approach the Hon'ble Apex Court, the interim protection granted by the City Civil Court shall continue for a period of two weeks.

(GAURI GODSE, J.)