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Court : Mumbai

Decided On : Jun-16-2016

Judge : R.M. Savant

Appeal No. : Appeal From Order No. 1206 of 2015 with Civil Application No. 1532 of 2015

Appellant : MCA Constructions

Respondent : Mrs. Ranjana Rajesh Patil and Others

Judgement :

Oral Judgment:

1. Admit. Considering the challenge raised heard forthwith.

2. The above Appeal from Order takes exception to the order dated 13.07.2015 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai. By the said order, Notice of Motion No.1117 of 2015 filed by the Appellant i.e. the Defendant No.5 came to be dismissed.

3. The Respondent Nos.1 and 2 herein are the original Plaintiffs who have filed the suit in question wherein the main substantive relief sought is by way of prayer clause (a). The same is reproduced hereinunder for the sake of ready reference:-

"(a) This Hon'ble Court be pleased to restrain the Defendant, their servants, agents and/or any other person/s acting on its behalf, permanently by an order and injunction of this Hon'ble Court from demolition of suit premises 001 Transit Camp Hanuman Nagar, Prsiwada, Andheri (East) Mumbai-400 099 and not to demolish the transit camp till allotment of permanent alternate accommodation in rehab component as per the law."

4. The Plaintiffs i.e. Respondent Nos.1 and 2 herein had their structure on the plot of land wherein similar other structures were situated and in respect of which a Slum Rehabilitation Scheme is being implemented through the Appellant i.e. the Defendant No.5 to the suit. There is no dispute that the Plaintiffs have been held to be entitled to the allotment of permanent alternate accommodation. With a view to implement the said scheme, the Plaintiffs' original structure was demolished and the Plaintiffs were moved to the temporary transit accommodation being tenement No.001. The occupation of the Plaintiffs of the said temporary transit accommodation in terms of said Slum Rehabilitation Scheme was to be only till the permanent alternate accommodation was made available to the Plaintiffs.

5. The Plaintiffs were to be accommodated in Rehab Building No.2. It seems that the Rehab Building No.2 was complete and the Plaintiffs were asked to shift to the permanent alternate accommodation being Tenement No.006 admeasuring 225 sq.ft. in the said Rehab Building No.2. It seems that getting wind of the fact that the temporary transit accommodation occupied by them would be demolished and they would be asked to move to the permanent alternate accommodation that the Plaintiffs filed the suit in question being SC Suit No.2071 of 2013, in which the substantive relief sought by the Plaintiffs has already been adverted to hereinabove. In the said suit, the Plaintiffs filed a Notice of Motion and moved the same for ad-interim relief on 15.07.2013. A Learned Judge of the City Civil Court by order dated 15.07.2013 granted ad-interim relief in the following terms:-

"Ad-interim injunction granted in following terms:-

Defendant No.5 not to demolish the transit accommodation No.001 of the Plaintiffs or in any way cause damage to it so as to make it inhabitable and not to cut any existing amenities to it till next date."

6. The gist of the reasoning of the Learned Judge as can be seen from the order dated 15.07.2013 is that the Learned Judge found fault with the Defendant No.5 developer of not obtaining the occupation certificate and allowing the eligible slum dwellers to occupy the permanent alternate accommodation without such occupation certificate. Hence, the principal ground on which the ad-interim relief was granted was that in respect of the Rehab Building No.2 occupation certificate was not obtained by the Defendant No.5.

7. The Defendant No.5 thereafter obtained the full occupation certificate which is dated 21.01.2015 for the said Rehab Building No.2. The said occupation certificate is at page No.25 of the Appeal paper book. Clause (1) of the said occupation certificate mentions that the same is granted for 72 numbers of rehab residential tenements i.e. GR + 7 upper floors. It further states that all the pending LOI and IOA conditions shall be duly complied with before asking full occupation to building under reference. The Defendant No.5 armed with the said occupation certificate dated 21.01.2015 filed the instant Notice of Motion being No.1117 of 2015 seeking interim relief in terms of prayer clause (a). The said prayer clause (a) for the sake of ready reference is reproduced hereinunder:-

"(a) This Hon'ble Court be pleased to vacate the order dated 15.07.2013 passed by this Hon'ble Court in Notice of Motion No.1117 of 2013 and direct the Plaintiffs to vacate the suit premises i.e. Transit Room No.001 and shift to the Permanent Accommodation being room No.006 in Rehab Building No.2 constructed on the suit property."

8. The instant Notice of Motion was heard by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi who by the impugned order dated 13.07.2015 dismissed the same. Before the Trial Court it was sought to be contended on behalf of the Plaintiffs that the developers have joined hands with some of the tenants and even SRA and as such allotment of permanent alternate accommodation was not legal and valid. The Learned Judge adverted to the said contention urged on behalf of the Plaintiffs as also contention urged on behalf of the SRA that the allotment has been done by the society only in consultation with the developers. On behalf of the Defendant No.5 i.e. Appellant herein though it

was accepted by it that there was no drawal of lots, it was pointed out that the Assistant Registrar of Co-operative Societies (SRA) has checked and submitted a report in respect of the allotment and the same also been accepted. The Trial Court has rejected the Motion and dismissed the same on the ground that since the procedure for allotment was not followed, the relief sought by the Defendant No.5 could not be granted. The Trial Court has observed that though many persons in the transit camp have occupied the permanent accommodation in the rehab building, but has observed that there was no allotment as required by law. The Trial Court was of view that unless proper procedure for allotment is followed, the Plaintiffs cannot be forced to vacate the transit accommodation as the developer is bound to provide permanent accommodation after due compliance of the procedure. As indicated above, the Trial Court i.e. the Learned Judge of the City Civil Court, Borivali Division, Dindoshi has accordingly by the impugned order dismissed the Notice of Motion.

9. The Learned Counsel appearing on behalf of the Appellant i.e. the Defendant No.5 Mr. Vishal Kanade would contend that since the ad-interim order dated 15.07.2013 was passed by the Trial Court principally on the ground that there was no occupation certificate in respect of Rehab Building No.2, once the occupation certificate was obtained the said ad-interim order was required to be vacated. It was the submission of Mr. Vishal Kanade that assuming that there is some breach in procedure in allotment of permanent alternate accommodation, the grievance of the Plaintiffs can only be against the society of the slum dwellers but in the guise of the said grievance, the Plaintiffs cannot continue to occupy the temporary transit accommodation. It was the submission of Mr. Vishal Kanade that almost all the occupants of the transit accommodation have shifted to the permanent accommodation in the said Rehab Building No.2 save and except the Plaintiffs.

10. Per contra, the Learned Counsel Mr. R.M. Yadav appearing for the original Plaintiffs i.e. the Respondent Nos.1 and 2 herein sought to justify the order. The Learned Counsel sought to reiterate the grievance of the Plaintiffs as regards the procedure that was required to be followed prior to making the allotments. It was also his submission that there was no proper access to the said Rehab Building No.2. It was also sought to be contended that the said Rehab Building No.2 has

not been constructed in terms of the approved plans. The Learned Counsel appearing for the SRA as well as the Learned Counsel appearing for the Respondent No.7 society of the slum dwellers accept the position that more than 95% slum dwellers have shifted to the permanent accommodation.

11. Having heard the Learned Counsel for the parties, I have considered the rival contentions.

12. The issue that arises whether the Plaintiffs i.e. the Respondent Nos.1 and 2 herein are entitled to continue on the site in question in the temporary transit accommodation provided to them pending the construction of the permanent accommodation. As indicated above, one of the essential features of a Slum Rehabilitation Scheme is that the eligible slum dwellers have to be provided for temporary transit accommodation pending the construction of the permanent accommodation for them. In the instant case, the proponent of the said scheme i.e. Defendant No.5 has provided temporary transit accommodation to the eligible slum dwellers till permanent accommodation is made available to him or her. In the instant case, as indicated above, ad-interim relief in the Notice of Motion filed by the Respondent Nos.1 and 2 was granted principally because the occupation certificate in respect of the Rehab Building No.2 was not obtained by the Defendant No.5. The said occupation certificate was thereafter obtained on 21.01.2015 for the said Rehab Building No.2. Once that be so, then the Plaintiffs could not have any grievance and were required to shift to the said permanent accommodation. In so far as the procedure for allotment etc. is concerned, the grievance of the Plaintiffs if any can be against the society of the slum dwellers as it is the society of the slum dwellers which is concerned with the allotment of tenements in the rehab building. In the instant case, though it has come on record that no drawal of lots had taken place nevertheless it seems that the Assistant Registrar of Co-operative Societies (SRA) has carried out inspection and submitted his report which was accepted.

13. There is no dispute about the fact that out of 72 eligible slum dwellers almost 70 slum dwellers have been shifted to the permanent alternate accommodation and the Plaintiffs are possibly the only ones who have to shift to the permanent

alternate accommodation. The continuation of the Plaintiffs on the site in question when the permanent accommodation is made available to them is not in consonance with the scheme of the Slum Rehabilitation Scheme as for the completion of the Slum Rehabilitation Scheme the structure wherein the temporary transit accommodation is provided has to be removed so as to facilitate the further implementation of the scheme and its completion. The Learned Judge of the City Civil Court has glossed over the aforesaid facts and on the ground that procedure of drawal of lots has not been followed, refused to vacate the ad-interim relief especially when all other slum dwellers have shifted to the permanent alternate accommodation and the occupation certificate in respect of the Rehab Building No.2 has also been obtained. The continuation of the Plaintiffs on the site in question in the temporary transit accommodation would also have consequences for the Defendant No.5 in the matter of obtaining the completion certificate in respect of the project. The contention raised on behalf of the Plaintiffs that there is no access also cannot be accepted once the occupation certificate is granted. The Plaintiffs it seems for the reasons best known to them are raising a new objection every time. This can be seen from the fact that an objection is now sought to be raised that the rehab building has not been constructed as per standard plan which was never raised earlier.

14. In my view, therefore the order passed by the Trial Court rejecting the Notice of Motion filed by the Defendant No.5 cannot be sustained. The same is required to be set aside. The Appeal from Order is accordingly allowed. The consequence of the same would be that the Notice of Motion filed by the Defendant No.5 would stand allowed in terms of prayer clause (a). The Plaintiffs would be required to shift to the permanent accommodation in Rehab Building No.2. The Defendant No.5 and Defendant No.7 would see to it that the said Tenement No.006 is handed over to the Plaintiffs for occupation in the same condition as the tenements to the other eligible slum dwellers.

15. In view of the Appeal from Order being disposed of, the Civil Application does not survive and to accordingly stand disposed of as such.

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