Date- 26-04-2024



To,
The Executive Eng, Building Proposal,
WS-II, P/S Ward,
Near Sanskruti Complex, Thakur Complex,
Kandivali-E
Mumbai -400101.

- **Subject: - Proposed Redevelopment Project of Ashiyana Apartment Co-operative Housing Society Ltd. Located at plot bearing CTS no- 97A/27, Upper Govind Nagar, Malad E. Mumbai-400097.**
- **Ref-1:- Your Letter bearing ref no-Dy.Ch. E/B.P./3537/WS. II/P&R, dated-19-07-2023, addressed to Standard Batteries Employees CHS Ltd.**
- **Ref-2:- Our Reply to Complaint, dated- 06-07-2023, Addressed to your good office.**
- **Ref-2: - Your Letter bearing ref no-Dy.Ch. E/B.P./2951/WS. II/P&R, dated 03-07-2023, addressed to us, seeking clarification on the complaint.**
- **Ref-2: - Complaint Letter from Standard Batteries Employees Chsl, dated 16-05-2023, received by your office on 21-06-2023.**
- **Ref-3: - EEBP File no: - P-11938/2022/(97A/27)/P/S Ward/CHINCHAVALI-P/S**

Respected Sir,

We hereby submit to you the **order copy,** passed in the **Notice of Motion no- 2369 of 2022, in L.C suit no- 1200 of 2022**, filled by the complainant i.e. **Standard Batteries Employees Chsl,** against **MCGM & Ashiyana Apartment Chsl.**

We further mention that the Hon'ble Court has passed the said order favoring the aforesaid Project & Ashiyan Apartment Chsl.

F-48, Profit Centre,
90ft Road, Mahavir Nagar,
Kandivali (W) Mumbai - 400 067.
Office.: 022-49639465
Email:pearlinfra23@gmail.com

Further the **Hon'ble Court has clearly dismissed** the said Notice of Motion and has not granted any relief to the complainant. This is good enough to prove that the said complainant had done a false case with malafide intentions to extort monies.

The copy of the **said order is enclosed** with this letter for your ready reference and records.

Thanking You,

Yours Faithfully

For Pearl Infra

PEARL INFRA MUMBAI 67

Authorized Signatory

CC to: - Phulkar & Phulkar Architects

Enclosed as above.

F-48, Profit Centre,
90ft Road, Mahavir Nagar,
Kandivali (W) Mumbai - 400 067.
Office.: 022-49639465
Email:pearlinfra23@gmail.com

The date on which the copy was applied for 22/4/24
The date on which the application was completed 24 APR 2024
The date given to the applicant for taking deliver of the copy
The date on which the copy was ready for delivery 24 APR 2024
The date on which it was delivered or posted
Shri/M/s. R. C. Koushik
Folio 9
Certified copy Rs. 36/-
Add. Charges Rs.

R-1445/24

0364502
22/4/24

MHCC040069372022

IN THE CITY CIVIL COURT AT MUMBAI, BORIVALI DIVISION, DINDOSHI, GOREGAON, MUMBAI.

NOTICE OF MOTION NO.2369 OF 2022
IN
L.C. SUIT NO.1200 OF 2022

Standard Batteries Employees Co-operative Housing Society Limited ... Plaintiff

V/s

Municipal Corporation of Gr. Mumbai ... Defendant

THE BOMBAY CITY CIVIL COURT BORIVALI DIVISION (GOREGAON)

CORAM: H.H.JUDGE SHRI S. N. SALVE
Court Room No.07
DATE : 19th April, 2024

Adv. Mr. Charolia for plaintiff.
Adv. Mr. Vibhishan Sutar for Defendant No.1/MCGM.
Adv. Mr. Kaushik for defendant No.2.
Shri. Mukesh Chadda -Secretory of deft no.2.

Superintendent
City Civil & Sessions Court
Bombay Borivali Division
At. Dindoshi (Goregaon)

ORAL ORDER

This Notice of Motion is taken out by the plaintiffs Society, Standard Batteries Employees Co-operative Housing Society Ltd. seeking interim injunction restraining the defendant No.2 from

interfering, selling, alienating and creating third party rights in respect of plot of land bearing Survey No.47, CTS No.97-A, Plot No.39 village Chinchvali, Taluka Borivali, Malad (E), Mumbai (for short, suit premises).

2. Plaintiffs Society's case, in short, is that plaintiff Society is in use, occupation and possession of the suit premises by an Indenture of Conveyance dated 30.12.1974 registered with the Sub Registrar of Assurances from M/s. Saksaria Sugar Mills Pvt. Ltd. Defendant No.1 MCGM is a body constituted under the provisions of Mumbai Municipal Corporation Act (for short, MMC Act). Defendant No.2 is a Co-operative Housing Society. Defendant No.2 has no right, title and interest in respect of suit premises. The defendant No.2 society is intending to dispossess the plaintiff from the suit premises and to take forcible possession illegally and high handedly. The suit premises is bounded on east side by 9.14 meters, 3 meters wide road on west side by plot No.1, on the north side plot No.49 and to southern side Plot No.28. The plaintiffs Society is paying assessment tax of the said plot of land to the defendant/MCGM. Plaintiffs Society has been occupying the suit premises since long. According to the plaintiffs Society, the defendant No.2 society is situated on the plot of land belonging to the plaintiffs Society. The defendant No.2 society has illegally and unauthorizedly started carrying out construction of tin sheet wall in front of suit premises and has put a board "Ashiyana". According to the plaintiffs Society, the defendant No.2 society has violated the legal rights of the plaintiffs Society over the suit premises. The defendant No.2 society

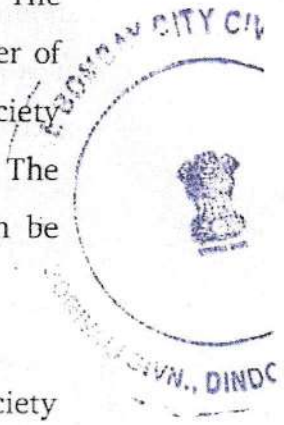
BORIVALI DIVN.

wants to change the identity of the suit premises by raising illegal construction. Plaintiffs Society made complaint with the police and the defendant No.1/MCGM but in vain. According to the plaintiffs Society, it is necessary to restrain the defendant No.2 society from carrying out construction and creating third party interest. According to the plaintiffs Society, the plaintiffs Society has made out a prima facie case for interim injunction. The balance of convenience also tilts in favour of plaintiffs Society and plaintiffs Society would suffer irreparable loss in the event interim relief as prayed is refused. Ultimately, the plaintiffs Society prayed that Notice of Motion be made absolute.

3. The defendant No.1/MCGM has failed to file reply to the Notice of Motion.

4. The defendant No.2 society opposed the Notice of Motion by filing affidavit-in-reply. According to the defendant No.2 Society, the suit as filed by the plaintiff society is not maintainable. The defendant No.2 society submitted that vide Registered Articles of Agreement dated 01.08.1986 executed by the plaintiffs Society in favour of M/s. Ashirvad Enterprises (Developer), the plaintiffs Society sold, transferred, assigned and relinquished all their rights, title and interest in respect of plot No.39 admeasuring 919.40sq.meters forming part of Survey No.47(pt.), CTS No.97-A/27 of village Chinchvali, Taluka Borivali. Pursuant to the Deed of Conveyance dated 03.06.2020 executed by Ashirvad Enterprises (Developer) in favour of the defendant No.2 Society, the defendant No.2 society has become the absolute owner of the said land

along with building construction thereon known as "Ashiyana Apartment CHSL" consisting of ground plus three upper floors. The said Deed of Conveyance is valid, existing and still in force. The defendant No.2 society denied that the plaintiff society is the owner of the suit premises. According to the defendant No.2, the plaintiff society has not made out a prima facie case for grant of interim injunction. The defendant No.2 Society, therefore, prayed that Notice of Motion be dismissed.



5. By way of the additional affidavit, defendant No.2 society submitted that defendant No.2 society was in dilapidated and dangerous condition and the same was demolished by the defendant No.1 pursuant to pull down notice. It is further contended that when the defendant No.2 society taken steps for redevelopment, the plaintiffs Society has resorted to dishonest moves to impede the development process. It is further submitted that the plaintiffs Society had complaint against the defendant society alleging that the plaintiffs Society is the owner of the suit property, therefore NA tax should not be collected from the defendant No.2. It is further submitted by defendant No.2 society that defendant No. 2 society has already been issued IOD and CC together with the excavation NOC in furtherance of redevelopment of the suit land. It is, therefore, prayed by the defendant No.2 that the Notice of Motion may be dismissed.

6. The plaintiff has also filed rejoinder denying the averments of the defendant No.2 society in their additional affidavit in support of

the Notice of Motion. The plaintiff has also filed affidavit along with documents.

7. The points for determination along with my findings with reasons thereon are as follows:-

Sr. No.	POINTS	FINDINGS
1	Whether the plaintiffs Society has made out a prima facie case in their favour?	No.
2	Whether the balance of convenience lies in favour of the plaintiffs Society?	No.
3	Whether the plaintiffs Society would suffer irreparable loss in the event interim relief is refused?	No.
4	What Order?	Notice of Motion is dismissed.

REASONS

8. I have heard the Ld. Advocate for the plaintiffs Society and the Ld. Advocate for the defendant No.2 society at considerable length. It was argued by the Ld. Advocate for the plaintiffs Society that the Ashirwad Builder without rights, title and interest has transferred the plot of land to the defendant No.2 society. It is submitted that the plaintiffs Society is the owner of the plot of land where the defendant

No.2 society is situated. It is further argued by him that the defendant No.2 society is being redeveloped and if the defendant No.2 society creates third party rights, title and interest in respect of the flats in the building constructed on the said plot of land, there would be multiplicity of litigations. It is, therefore, prayed that defendant No.2 society be restrained from an order of injunction restraining from interfering, alienating and creating third party rights, title and interest in respect of the plot of land on which the defendant No.2 society is situated.

BOMBAY CITY C
IVIL, DINDO

9. On the other hand, the Ld. Advocate for defendant No.2 society argued that the defendant No.2 society has become the absolute owner the plot of land where it is situated. It is argued that the plaintiff executed Articles of Agreement dated 01.08.1986 in favour of Ashirwad Builders and on the basis of the Agreement executed in favour of the Ashirwad Builders, the Ashirwad Builders executed Conveyance Deed in favour of defendant No.2 society. It is further argued that the said Conveyance Deed executed by M/s. Ashirwad Enterprises in favour of the defendant No.2 Society is not challenged by the plaintiffs Society. It is further argued that defendant Nos. 2 society was in dangerous and dilapidated condition. Therefore, the defendant/MCGM issued notice under Sec.354 of the M.M.C. Act for pulling down the same and in pursuance of the same, the said building was pulled down and on the basis of IOD and CC issued by defendant No.1/MCGM, construction of building started. It is further submitted that the construction of the building cannot be stalled. It is further argued that no case is made out

by the plaintiffs Society for grant of ad-interim relief. It is, therefore, prayed that Notice of Motion taken out by the plaintiffs Society may be dismissed.

Point Nos.1 to 3 :-

10. Having heard the Ld. Advocate for the plaintiffs Society and the Ld. Advocate for defendant No.2 society, I have gone through the Notice of Motion, affidavit in support, affidavit in reply, affidavit in rejoinder, additional affidavit filed by the plaintiffs society and averments of the plaint and documents annexed with it. It is the case of the plaintiffs Society that they are the owner of the suit property and the defendant No.2 Society without having right, title and interest in respect of the plot of land, have started construction. On going through the documents on record, it appears that vide registered of Articles of Agreement dated 01.08.1986 executed by the plaintiffs Society in favour of M/s. Ashirwad Enterprises, plaintiffs Society sold, transferred and relinquished their right, title and interest in respect of plot No.39 admeasuring 919.40sq.meters of CTS No.97/A/27 of village Chinchavali. It appears from the Deed of Conveyance dated 03.06.2020 executed by the Ashirwad Enterprises in favour of defendant No.2 society that the defendant No.2 society has became the owner of the said land along with the building constructed thereon. It is pertinent to point out here that the plaintiff Society has not challenged the said Deed of Conveyance executed by M/s. Ashirwad Enterprises in favour of

defendant No.2 society. Prima facie it appears that the defendant No.2 society has became owner of the plot of land along with the building constructed thereon known as Ashiyana Apartment CHSL. The plaintiffs Society has prima facie failed to show title with respect to the suit premises.

11. It is also pertinent to point out here that the said building was in dangerous and dilapidated condition, it was pulled down in pursuance of the notice. The occupants of the flats will have to be rehabilitated in the redeveloped building. Therefore, the redevelopment of the building cannot be stalled. In view of the above, the plaintiffs Society has failed to make out a prima facie case and balance of convenience in their favour. No irreparable loss would be caused to the plaintiffs society if the interim reliefs as prayed is refused. I, therefore, hold that plaintiffs Society having failed to make out prima facie case and balance of convenience in their favour, is not entitled for the reliefs as claimed. I, therefore, answer point Nos. 1 to 3 in the negative.

Point No.4:-

12. In view of negative findings to point Nos.1 to 3, plaintiff is not entitled for injunction as prayed. Therefore, the Notice of Motion is liable to be dismissed.

In the result, following order is passed :-

CIVIL COURT ★ DINDOSHI (GOREGAON)

ORDER

1. Notice of Motion No.2369 of 2022 is dismissed.
2. Accordingly Notice of Motion No.2369 of 2022 stands disposed of

Sd/-
(S. N. Salve)
Judge,
City Civil Court,
Borivali Div., Dindoshi, Mumbai.

Dt.19.04.2024

Date of dictation on computer : 19.04.2024
Date of order signed by HHJ : 24.04.2024
Date of delivery to CC

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."

UPLOAD DATE AND TIME : 24/04/2024 at 2.45 p.m.

Mrs. T. S. Bhogte
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	**HHJ Shri S. N. Salve** (Court Room No.07)
Date of Pronouncement of Judgment/Order	19.04.2024
Judgment/Order signed by P.O. on	24.04.2024
Judgment/Order uploaded on	24.04.2024

CITY CIVIL COURT ★ BORIVALI DIVN., DINDOSHI (GOREGAON)

Asst. Registrar
City Civil Court, Bombay
Borivali Division at

CERTIFIED TRUE COPY
24 APR 2024
Asst. Registrar
City Civil Court, Bombay
Borivali Division at
Dindoshi (Goregaon)

Seal
This 24 day of APR 2024

checked by D. S. Pawar 24/4/24 (SS)