

NM No. 3100 of 2024

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MHCC010143152024



IN THE BOMBAY CITY CIVIL COURT AT BOMBAY.

NOTICE OF MOTION NO. 3100 OF 2024

IN

SUIT NO. 3465 OF 2024

(High Court Suit No. 65 of 2023)

Shakuntala Kutty Shetty

...Plaintiff

Versus

1. Kailash Prabhat Co-operative
Housing Society Limited and others

...Defendants

CORAM :	HIS HONOUR JUDGE SHRI C.S.Datir
	CITY CIVIL COURT, GR.BOMBAY
	(C.R. NO.63).
DATE :	02-07-2025

Appearance:

Ld. Advocate Shri. Rajesh Kanojia for the plaintiff.

Ld. Advocate Shri Neelanshu Roy for defendant No.1.

Ld. Advocate Shri Vir Patel for defendant No.2.

Ld. Advocate Smt. Shital Waghmare for defendant No.3/BMC.

ORDER

1. The plaintiff has taken out this notice of motion, requesting that, he is owner of the suit premises, located at the building/apartment. Now the said building has gone for re-development. The society and developer (defendant Nos.1 and 2) are now in possession of the suit premises. As they are in possession and it will take sufficient time to complete the building and hand over the possession to the plaintiff, there is reasonable apprehension that, they may create third party interest in order to deprive his right. If they create third party interest, the very purpose of the filing of the suit would be frustrated and it would lead multiplicity of proceeding. To avoid all those things, it is necessary to restrain them from creating third party interest.

2. He further requested that, to restrain the defendants or their agents from submitting any plan for sanction to defendant no.3 without providing and making provision of commercial premises on the ground floor of the proposed building. He also requested that, defendant no.3 be restrained from sanctioning or permitting any application either by the defendant nos.1 and 2 in respect of the suit building. He also requested to direct the defendant nos.1 and 2 to execute and register permanent

alternate accommodation agreement with all the benefits. He further requested that defendant no.2 builder be directed to provide all benefits as mentioned in the development agreement dtd. 14-10-2022. He prays that, prayer clause (a) to (e) be granted as prayed.

3. The defendants have filed say and resisted the application, saying that, they are not going to create third party interest. Defendant nos. 1 and 2 being a society and developer have to follow the procedure of the Municipal Corporation while redeveloping the building. The plaintiff would get redeveloped premises as per the norms and nothing more than that, therefore, notice of motion be rejected.

4. Heard argument. Perused record.

5. No doubt, it appears that plaintiff is owner of the suit premises. The suit premises has now gone for redevelopment. After the redevelopment, plaintiff will get the suit premises as per the development agreement. There is reasonable apprehension in the mind of plaintiff that defendant nos. 1 and 2 now are in possession, they may alienate or create third party interest in order to deprive plaintiff's right. If it happens, the suit will be frustrated. Therefore, I am of view that if defendant nos. 1 and 2 restrained from creating third party interest, it would be appropriate to avoid multiplicity of proceeding and to protect the right of the plaintiff.

6. So far benefits are concerned, it is mentioned in the

development agreement that the holder of the flat would get the benefits till the new building is constructed. I am of view that, as per the development agreement dtd. 14-10-2022, plaintiff is entitled for the benefits from the developer as agreed in the development agreement.

7. So far prayer clause (b), (c) and (d) are concerned, I am not satisfied to grant the relief because defendant no.1 society and defendant no.2 being a developer are under obligation to obtain necessary sanction from the Municipal corporation in order to complete the building. Without sanction, the society and builder would not fulfill the necessary condition and compliance as per the rules. They are following the procedure established by law therefore, their obligations cannot be restrained for the benefit of plaintiff.

8. Considering the above discussion, I am satisfied to grant a relief so far prayer clause (a) and (e) are concerned only. So far prayer clause (b), (c) and (d) are concerned, being a meritless and it requires full fledged evidence by the respective parties to decide the same, hence deserves to be dismissed. Hence, following order:

ORDER-

1. Notice of Motion No. 3100 of 2024 is partly allowed.
2. Defendant nos.1 and 2 are hereby directed not to create third party interest in respect of the suit premises of the plaintiff.
3. Defendant no.2/developer is directed to provide all the benefits to the plaintiff as mentioned in the development agreement dtd.14-10-2022.

4. Rest of the prayer clause i.e (b), (c) and (d) stands rejected.
5. Accordingly, Notice of Motion No. 3100 of 2024 is disposed off.



(C.S. Datir)
Judge,
City Civil Court,
Gr. Bombay.

Date : 02-07-2025

Dictated on : 02-07-2025

Typed on : 02-07-2025

Corrected on : 02-07-2025

Signed on : 02-07-2025

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

UPLOAD DATE AND TIME

02-07-2025 6.00 P.m.

NAME OF STENOGRAPHER

K.M.Rana

Name of the Judge (with Court Room no.63)	HHJ Shri C.S.Datir (Court Room No.63).
Date of Pronouncement of Judgment/Order	02-07-2025
Judgment/Order signed by P.O. on	02-07-2025
Judgment/Order uploaded on	02-07-2025