

BEFORE THE ADDITIONAL DEPUTY COLLECTOR (ENC. & REM.)

WESTERN SUBURB



Administrative Building, 7th Floor, Government Colony, Bandra (East),

Mumbai - 400 051

APPEAL NO. 774 OF 2017

Prabhavati Shivram Sheety

... Appellant

Versus

Competent Authority/Assistant Commissioner

R/North & Ors.

... Respondents

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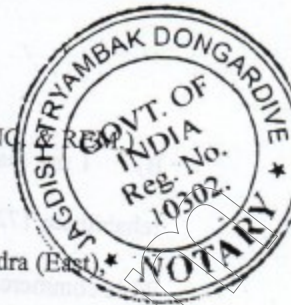
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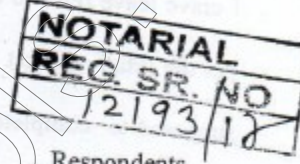
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I, Mr. Arjun Anant Waghmare proprietor of M/s. Sunil Constructions being the Respondent No.4 abovenamed having my office at E/5, 2nd floor, Gora Gandhi Apartment, S.V. Road, Borivali (West), Mumbai 400 092, do hereby solemnly affirm and say as under:-

1) I have gone through the above appeal and I am making this affidavit in reply to the same.

2) Without prejudice to the above, I respectfully submit that the Appellant has suppressed the true facts of the case and in this regard I submit as under:

A) I say that the Appellant claims to be owner of two shops bearing room Nos. 7-2/10 and 7-1/10, at Sonya Budhia Compound, L. T. Marg, Near Dahisar Station, Dahisar (W), Mumbai - 400 068. The said shops are covered by SRA Scheme known as "OM Shiv Matoshri SRA Scheme" on Plot Bearing CST Nos. 815 to 825, Sonya Budhya Compound, L. T. Road, Dahisar (W), Mumbai 400 068 (herein referred to as said 'SRA Scheme').

B) I say that under the said SRA Scheme the Developer is required to rehabilitate 172 numbers of slum dwellers including 152 in residential and 20 in commercial tenements.

C) I say that as per D. P. remarks, said area i.e. Plot Nos. 815 to 825 where the same is being implemented in entirely reserved for retail market.

I crave leave refer to and rely upon said D.P. remarks when produced. As per the retail market NOC, the Developer i.e. Respondent No.4 herein is supposed to complete and handover retail market building comprising of basement plus ground plus seven upper floors totally admeasuring 2594.47 square meters free of cost to the Municipal Corporation of Greater Mumbai being Respondent No. 1 herein. I crave leave to refer to and rely upon the retail market NOC issued by Respondent No. 2 when produced. I say that I have already constructed rehab building having total 172 tenements and part occupation for the same has been obtained. I say that out of 20 shop owners 10 shops owners including the Appellant herein are not co-operating. Annexure – II, for the said SRA scheme was issued in the year 1999 and Appellant was held eligible for residential tenement. However, in the year 2001 the Appellant was held eligible for commercial area instead of residential area of two tenements admeasuring 225 square feet each. I crave leave refer to and rely upon said Annexure – II when produced. I say that I.O.A. was issued in the year 2003 and further amended in the year 2004. I crave leave to refer to and rely upon the copies of two I.O.A. dated 23/03/2003 and 19/03/2004 in this regard when produced. I also crave leave to refer to and reply upon the further part occupation permission dated 13/04/2017 granted to shops allotted to the Appellant when produced.



Ex¹A



D) I say that though under the said SRA scheme the Appellant was entitled to two shops in rehab building she went on pressurising the Developer to allot her 1200 square feet area in the free sale component which was not agreed to.

E) I Submit that in the year 2006, Appellant filed a Writ Petition bearing No. 1034 of 2006 in this Hon'ble Court concerning her purported claim against the Respondent No.1 and other and this Hon'ble Court has by an order dated 22nd June, 2006 passed in writ Petition No. 1034 of 2006 filed by the Applicant observed that "it is the case of the Applicant that her name is included in the Annexure - II and she is held to be entitled and once that is the case it will not be possible for the Hon'ble Court to intervene at the instance of the individual member."

This Hon'ble Court has in its said order dated 22nd June, 2006 also observed that if the Appellant is entitled to the extra area i.e. more than 225 sq. ft. she is entitled to purchase the same under the provisions of D.C.

Ex "A" Rules in force. Hereto annexed and marked as Exhibit "A" is a copy of said order dated 22nd June 2006.

F) I say that the Appellant thereupon filed S. C. Suit No. 2598 of 2007 in the Bombay City Civil Court against the Respondent No.4 and others praying inter-alia as under:

"(i) That the defendants, their servants and agents are not entitled in law to demolish the plaintiffs suit structure being 71/10, 72/10 and 74/10 situated at plot bearing CTS Nos. 815 to 821 known as Soniya Budhiya Compound, L.T. Road, Dahisar (West), Mumbai, till Defendant Nos. 3 and 4 grant area under

(4)

the scheme as possessed by the Plaintiff in free sale building and/or as per scheme as possessed by the Plaintiff in free sale building and/or as per scheme and in accordance with law.

(ii) that it be declared that as per D.C. Regulations 33 (10) read with Appendix -IV the plaintiff is entitled to in exchange for the area now in possession in free sale building in terms mentioned in Appendix -IV being Exhibit - C and consequential and necessary directions be issued in this behalf.

(iii) that pending the hearing and final disposal of the suit, defendant Nos. 3 and 4, their agents and servants and representatives be restrained by an order and injunction of this Hon'ble Court from demolishing the structure bearing No. No. 71/10, and 72/10 situate at C.T.S. No. 816, L.T. Road, Dahisar (West), Mumbai and in possession of plaintiffs except by strictly and in compliance with scheme mentioned in Exhibit -C to the Plaint.

(iv) Defendant No. 1 be directed to dispose of the plaintiff's representation dated 21st July, 2006 being Exhibit in terms of the direction of the Hon'ble High Court.

The Bombay City Civil Court passed an order dated 27/07/2007 declining grant of ad-interim relief to the Appellant. Being aggrieved, the Appellant filed an Appeal from order No. 640 of 2007 in this Hon'ble Court impugning the said order dated 27/07/2007 wherein it was contended that the Appellant had made a complaint before the Slum rehabilitation

