



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## Appeal from Order (St.) No.2748 OF 2024

1. Air India Staff Colony Association  
1st Estb in 1962 Reg.No.:B-777  
Kalina Santacruz East, Mumbai 400029.  
Through Shashikant K. Salunkhe (President)
2. Air India 2nd Colony Association  
Regn. No.:2564 Bombay  
Kalina Santacruz (East) Mumbai 400 029.  
Through Nilesh Dattaram Wagal (Secretary)
3. Indian Airlines Staff Colony Association,  
Regn No.F-2115, Through Sandip Drave (Secretary).
4. Indian Airlines Residents Colony  
2nd Reg.N.MAH/BOM/714-94  
Through Prakash Arjun Agdekar (President)... Appellants  
(Orig. Plaintiffs)

Versus

1. Mumbai International Airport Limited  
Having its registered office at Terminal B,  
1st Floor, Chatarpati Shivaji Maharaj  
International Airport, Santacruz (East),  
Mumbai -400 099.

2. Air India Ltd., Through its Chairman,  
Airlines House, 113, Gurudwara Rakabgan  
Road, New Delhi -110 001.
3. Air India Engineering Service Limited,  
Through its Chief Executive Officer,  
Airlines House, 113, Gurudwara Rakabganj  
Road, New Delhi-110 001.
4. AI Airport Service Limited,  
Through CEO, 2<sup>nd</sup> Floor, GSD Complex  
Terminal 2, Indira Gandhi International  
Airport, New Delhi-110 037.
5. Air India Asset Holding Company Limited,  
Chairman and Managing Director, Airlines  
House, 113, Gurudwara Rakabganj Road,  
New Delhi -110 001.
6. Airport Authority of India  
Regional Office at Porta Cabin, New  
Airport Colony, Opp. Parsiwada, Andheri,  
Sahar Road, Mumbai-400 099.
7. Senior Inspector of Police, Vakola  
Police Station, Santacruz (East),  
Mumbai-400 099.
8. Commissioner of Police, Crawford  
Market, Lokmanya Tilak Road,  
Dhobi Talao, Chatrapati Shivaji  
Terminus Area, Mumbai-400001. ... Respondents  
(Orig. Defendants)

a/w  
Interim Application (St.)No.2749 of 2024  
In  
Appeal from Order (St.)No.2748 of 2024

Air India Staff Colony  
Association & 3 Ors. ... Applicants  
(Org.Appellants)

**In the matter between:**

Air India Staff Colony  
Association & 3 Ors. ... Appellants  
(Org.Plaintiffs)

Vs.

Mumbai International Airport  
Ltd. & 7 Ors. ... Respondents  
(Org.Defendants)

...

Mr Ashok D.Shetty with Ms Rita Joshi and Mr Swapnil  
Kamble for the appellants.

Mr Vikram Nankani, Senior Advocate, with Mr Chirag  
Kamdar, Ms Shoma Maitra, Mr Nipeksh Arvind Jain i/b  
Wadia Ghandy & Co. for respondent No.1.

Mr Aditya Mehta with Mr Shiva Gaur i/by Mranal Mandhane  
for respondent No.2.

Mr Rakesh L. Singh with Ms Heena Shaikh i/by MV Kini &  
Co. for respondents No.3, 4 and 5.

Ms Shilpa Kapil with Mr Chidanand Kapil for respondent  
No.6.

**Coram: R. N. Laddha, J.**

**Date: 5 February 2024**

**P.C. :**

. By way of the present Appeal from Order, the appellants (original plaintiffs), who claim to be the association of housing societies in the colony formed for the employees of respondents No.2 to 4, have assailed the Order dated 25 January 2024 by the learned Judge, City Civil Court at Dindoshi, Mumbai. This Order pertains to Notice of Motion No.535 of 2024 in S.C. Suit (St) No.974 of 2024, where the *ad-interim* relief *qua* the demolition of buildings within their Kalina colony in Mumbai was denied.

2. The appellants state that the Air Corporation Employees Union challenged the Government of India's disinvestment of its stake in Air India Limited (respondent No.2) before the Madras High Court vide Writ Petition No.25568 of 2021. The Court dismissed this Writ Petition by an order dated 11 March 2022. Subsequently, respondent No.5 issued notices to the employees, instructing them to vacate the accommodations allotted to them in Air India colonies. Dissatisfied with this, the appellants, along with other associations, issued a strike notice, leading to the initiation of conciliation proceedings before the Deputy Chief Labour Commissioner (Central), Mumbai.

3. During the conciliation proceedings, the members of the appellants, once again, received notices to vacate the premises. The Air Corporation Employees Union contested these notices before the Division Bench of this Court in Writ Petition (L) No.19001 of 2022. On 25 August 2022, this Court ruled that the petitioners could continue to occupy the premises until 24 September 2022. After that, the respondents therein were allowed to take necessary action against the employees who failed to vacate. Additionally, the Government of India was permitted to file a reference under Section 10 of the Industrial Disputes Act, 1947. If the Government deemed that no reference was necessary due to the absence of an industrial dispute, the petitioners therein had the liberty to seek appropriate legal remedies.

4. On 15 September 2022, the Government of India declined to refer an industrial dispute to the Tribunal. In response, the Air Corporation Employees Union, along with others, filed Writ Petition (L) No.30244 of 2022 before the Division Bench of this Court. Subsequently, on 27 September 2022 and 28 September 2022, the writ petition was disposed of, and the matter was referred back to the Government of India for fresh consideration. Furthermore, the employees were directed to vacate the accommodation provided by respondent No.2, following the Housing Allotment Rules.

5. On 12 October 2022, the Government of India declined to refer a dispute to the Tribunal under Section 10 of the Industrial Disputes Act, 1947. The reason cited was that housing was not a term of employment, and therefore, the demand did not qualify as an industrial dispute. The Air Corporation Employees Union, among others, challenged this decision by filing Writ Petition (L) No.34165 of 2022 before the Division Bench of this Court. In the judgment dated 13 March 2023, the Court upheld the decision dated 12 October 2022 and noted that the respondents therein were not barred from availing appropriate remedies under the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (for short, 'the PPE Act') for eviction of the employees occupying the premises. Specifically, paragraph 74 of this judgment restrained the respondents therein from recovering penal rent and damages for a period of two weeks. The said paragraph 74 reads thus:

*“It is submitted that the Respondents were restrained from recovering the penal rent and/or damages. The same shall continue for a period of two weeks from today.”*

6. Aggrieved by the judgment dated 13 March 2023, the All India Service Engineers Association, along with others, approached the Hon'ble Supreme Court by filing SLP (C) Nos.6320 – 6322 of 2023. Subsequently, on 29 March 2023, the Hon'ble Supreme Court extended the interim relief previously granted by the Division Bench of this Court in paragraph 74 of the

aforementioned judgment dated 13 March 2023. The relevant excerpt from the said Order dated 29 March 2023, is as follows:

*“In the meanwhile, interim relief granted by the High Court in terms of paragraph 74 of the impugned order shall continue.”*

7. The appellants claim that on January 15, 16 and 18 of 2024, the representative of respondent No.1, accompanied by some outsiders, illegally entered the colony with bulldozers to demolish the buildings in the colony. Thereafter, on 23 January 2024, these individuals, along with police personnel, illegally demolished part of building No.39/D. The appellants allege that these persons threatened their members, aiming to demolish the buildings and forcefully evict them. As a result, the appellants filed S.C. Suit (st) No.974 of 2024 before the City Civil Court, Mumbai, seeking an injunction against the respondents. The injunction aims to prevent the obstruction, interference, and use of force in the appellants' premises as well as the demolition of the buildings in their possession. Additionally, the appellants in this suit filed a Notice of Motion under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'CPC') where the impugned order refused the *ad-interim* relief qua the demolition of the buildings.

8. I have heard Mr Ashok Shetty, the learned Counsel, appearing on behalf of the appellants; Mr Vikram Nankani, the

learned Senior Counsel, appearing on behalf of respondent No.1; Mr Aditya Mehta, the learned Counsel, representing respondent No.2; Mr Rakesh Singh, the learned Counsel, for respondents No.3, 4 and 5; and Ms Shilpa Kapil, the learned Counsel, for respondent No.6. With the assistance of the learned Counsel of the parties, I have perused the material placed on record, including the written submissions and the pleadings in the form of an affidavit-in-reply filed on behalf of respondent No.1, and the affidavit-in-rejoinder to the reply of respondent No.1 filed on behalf of the appellants.

9. Mr Ashok Shetty, the learned Counsel for the appellants, submits that the learned trial Court committed a manifest error by denying the *ad-interim* protection to the appellants against the demolition of the colony buildings. He submits that the learned trial Court overlooked that respondents No.1 and 6 resorted to coercive actions without following due process of law. These actions included unlawfully entering the colony premises and threatening the residents to vacate the premises, even though these premises were allotted to them as a part of their employment terms.

10. The learned Counsel invites the attention of this Court to orders dated 25 August 2022, 27 September 2022, 28 September 2022, and 13 March 2023 of the Division Benches of this Court.

The contention is that since the premises fall under the PPE Act, the respondents must adhere to the due process of law outlined by the same Act for evicting the appellants' members residing in the colony. The grievance raised is that respondent No.1, who does not own the land upon which the buildings stand, has initiated eviction proceedings before the Eviction Officer appointed under the Airports Authority of India Act, 1994 (for short, 'the AAI Act'). This action is deemed impermissible as the matter of eviction falls squarely within the purview of the PPE Act.

11. Mr Ashok Shetty, the learned Counsel, further submits that respondent No.2's management authorised appellant No.1 to oversee and safeguard the colony through an Agreement dated 18 December 1999. The learned Counsel further submits that the 19 buildings targeted for demolition by respondent No.1 are situated near the buildings inhabited by the members of the appellants. If the demolition proceeds, it could potentially disrupt the provision of vital services such as water and electricity to the occupants. Additionally, the resulting airborne dust poses a risk not only to the health and safety of the residents but also to the smooth functioning of the school.

12. On the other hand, Mr Vikram Nankani, the learned Senior Counsel representing respondent No.1, submits that the current

intention of respondent No.1 is to demolish only the 19 unoccupied buildings/ structures out of total 108, sparing the buildings currently inhabited by members of the appellants and the school within the colony.

13. The learned Senior Counsel argues that the trial Court has rightly denied an *ad-interim* relief in favour of the appellants. According to the learned Senior Counsel, respondent No.1 has a right to demolish the buildings in the colony, and the appellants lack legal standing to contest the demolition. The Counsel further states that the buildings within the housing colony stand on the lands with CTS Nos.7717, 7718 and 7726 in Village Kolekalyan, which were acquired by the Government and vest in respondent No.6. These lands were previously leased to respondent No.2 by respondent No.6, but the lease expired before April 2006.

14. The learned Senior Counsel submits that on 4 April 2006, under a policy decision taken by the Government for the privatisation of airports, an Operation, Management and Development Agreement was entered into by and between respondent No.6 and respondent No.1, under which the respondent No.1 was permitted to undertake the operation, maintenance, development, design, modernisation, financing, and management of the Mumbai Airport. Subsequently, a lease deed

dated 26 April 2006 and a supplemental lease deed dated 21 December 2011 were entered into by and between respondent No.6 and respondent No.1, under which the Mumbai Airport lands, along with the buildings/ structures standing thereon, owned by respondent No.6, including the lands of the colonies, were leased to respondent No.1.

15. The learned Senior Counsel draws the attention of this Court to a letter dated 29 September 2021 issued by the Government of India to state that the Air India Specific Alternative Mechanism allowed Air India employees to occupy the premises in the colonies for six months after the disinvestment or until the property was monetised, whichever occurred earlier. The disinvestment of Air India concluded on 27 January 2022, with Talace Private Limited, a wholly-owned subsidiary of Tata Sons Private Limited, acquiring Air India. Pursuant to these events, notices were issued to Air India employees, instructing them to vacate the accommodations by 26 July 2022. However, the Air India employees' unions contested the notices before the Division Bench of this Court in Writ Petition (L) No.19001 of 2022. In the judgment dated 25 August 2022, the Division Bench of this Court extended the deadline for vacating the premises until 24 September 2022. Furthermore, the Court allowed the respondents therein (including respondent No.1) to evict employees who failed to vacate under the PPE Act. The Court

consistently reiterated this direction through subsequent orders dated 27 September 2022, 28 September 2022, and 13 March 2023, emphasising that the occupying Air India employees must vacate the allotted premises and permitted the respondents to seek legal remedies for their eviction.

16. Mr Vikram Nankani, the learned Senior Counsel, submits that respondent No.1 has filed more than 300 eviction applications against Air India's occupying employees before the Eviction Officer under the AAI Act. According to the learned Senior Counsel, the PPE Act serves as a general law for evicting unauthorised occupants on public premises. Chapter V-A of the AAI Act address airport premises within the AAI Act, and it is under this provision that respondent No.1 initiated eviction proceedings before the appointed eviction officer.

17. The learned Senior Counsel draws the attention of this Court to the clauses of the agreement dated 18 December 1999. According to this agreement, the flats within the housing colonies are allocated to the Air India employees on a leave and license basis during their tenure of service. He submits that the agreement merely provides the appellants to maintain and safeguard the housing colony and for the appointment of security guards for that purpose. He further submits that the members of the appellants are

licensees of Air India and possess rights and interests in these flats limited to those of Air India. However, due to Air India's disinvestment and subsequent execution of the agreements, including the Handing Over Taking Over Note issued by respondent No.5 in favour of respondent No.1, the possession of the buildings/ structures situated on the colony lands has effectively transferred to respondent No.1. Consequently, the appellants who claim through Air India, hold no right, title, or interest in the premises.

18. According to the learned Senior Counsel, as per the provisions of the Specific Relief Act, 1963, the Court cannot grant an injunction when such injunction would cause impediment or delay in the progress or completion of the infrastructure project. The extension of the airport would fall under the category of such a project, and thus, an injunction ought not to be granted in favour of the appellants.

19. The learned Senior Counsel states that until the disposal of the eviction proceedings, the current occupation of the employees in the colony will remain undisturbed. Respondent No.1 commits to follow the due process of law. He states that necessary permissions, if any, will be obtained before demolishing the unoccupied buildings/ structures, ensuring minimal impact on the

occupants. The demolition will be scientific, prioritising human safety with expert deployment; due care will be taken to ensure that there will be no damage caused to the occupied buildings/structures and no occupied building, including the schools, will be demolished without following the due process of law. The essential services like water, electricity and school functioning will continue until lawful accommodation vacation occurs.

20. The learned Counsel appearing on behalf of respondents No.2 to 6 endorsed and backed the arguments put forth by Mr Vikram Nankani, the learned Senior Counsel, representing respondent No.1. In addition, Mr Aditya Mehta, the learned Counsel for respondent No.2, submits that only a miniscule number of flats remain occupied by employees who are yet to show willingness to vacate their accommodation and refuse to accept the unsubstantiated allegations made by the unions regarding undertakings having being given by employees on account of alleged threats. He submits that respondent No.2 has given benefits/ incentives to its employees who vacated their flats, including HRA, reimbursements of moving expenditure, hotel expenses, brokerage fees for securing new rental accommodation and expenses related to school admission, etc., and denied the allegations levelled by the appellants against respondent No.2.

21. This Court has given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

22. As seen from the orders passed by the Division Benches of this Court above, it is evident that the employees of Air India and its allied companies were directed to vacate the accommodation allotted to them, failing which the respondents were entitled to initiate action against them for eviction. The Supreme Court, in its Order dated 23 March 2023, extended only the protection against the recovery of the penal rent and damages by the respondents.

23. The record reveals that the colony flats are given on a leave and license basis to the employees who were in active service of Air India. Admittedly, these individual employees were the licensees of Air India, and the allotment of the flat would not confer upon them any right or interest by way of lease or otherwise in the immovable property. The right of the allottees in respect of the residence is a personal one. The provisions of the Housing Allotment Rules demonstrate that every employee cannot demand accommodation as a matter of right. The Rules make it clear that the allottee of the accommodation would merely be a licensee, and the housing is merely a welfare function. The rights and entitlements of residential accommodation are determined under

and governed by the Housing Rules. Furthermore, the agreement dated 18 December 1999 executed between respondent No.2 and appellant No.1 merely provides the appellant to maintain and safeguard the housing colony and the appointment of security guards for that purpose.

24. The respondent No.1 intends to demolish the 19 unoccupied buildings and not the buildings which are inhabited by the members of the appellants. Additionally, respondent No.1 assures this Court that until the disposal of the eviction proceedings, the current occupation of the employees in the colony will remain undisturbed. Respondent No.1 commits to follow the due process of law, and necessary permissions, if any, will be obtained before demolishing the unoccupied buildings/structures, ensuring minimal impact on the occupants. The demolition process will be scientifically executed, prioritising human safety with the deployment of experts, and due care will be taken to prevent damage to the occupied buildings/structures and no occupied building, including the schools, will be demolished without following the due process of law. The essential services such as water and electricity will continue to function, and there will be no hindrance in the operation of the schools until lawful accommodation vacation occurs.

25. For these reasons, this Court does not consider it necessary to discuss in detail the submissions advanced by the learned Counsel for the parties.

26. Resultantly, this Court does not find any error in the impugned order dated 25 January 2024, declining to grant *ad-interim* protection in favour of the appellants. The Appeal from Order is devoid of merits and is dismissed accordingly. As a sequel to the above, pending interim application also stands disposed of.

27. At this stage, the learned Counsel for the appellants prays for the continuation of *status-quo* for a period of two weeks. In the facts of the case, the request is rejected.

[R. N. Laddha, J.]