A AISHWARYA ATUL PUSALKAR

v.

MAHARASHTRA HOUSING & AREA DEVELOPMENT AUTHORITY & ORS.

B (Civil Appeal No. 7231 of 2012)

APRIL 27, 2020

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Maharashtra Housing and Area Development Act, 1976 – ss.2(25), 79, 95A and 177 – Family property of respondent no.8-husband was redeveloped – During redevelopment, occupants thereof shifted to temporary accommodation as required, appellant-wife did not – She shifted on the order of High Court passed in matrimonial proceeding pending between the parties – In parallel developments pertaining thereto, the decree of judicial separation granted to respondent no.8 was set aside – Plea for divorce, dismissed – Appellant filed writ petition inter alia *for directions to MHADA to rehouse her in the two flats allocated to respondent no.8 and his family in the redeveloped building, which as per her is her matrimonial home – Dismissed – Held: When a builder has discharged his obligation by accommodating the original owners in the redeveloped portion as per such a scheme, a lady married into that family is not entitled to invoke the writ jurisdiction of High Court to enforce her right to matrimonial home on the basis of said statute, if her husband does not permit her to reside in the allocated portion – Though appellant was dishoused as an occupier applying the provisions of 1976 Act, claim of her rehousing is based on her status as respondent no.8's wife – As of now, the decree of judicial separation stands invalidated and she is the legally wedded wife of respondent no.8 – However, the original building that constituted her matrimonial home has been demolished and large portions of the redeveloped building on the same plot has been parted with – Traditionally, her matrimonial home at present would be the premises in which her husband is residing – Judicial forum having fact-finding jurisdiction would be the proper forum for adjudicating claim of this nature – Further, respondent no.8 and the builder uniformly stated that a flat in the same building is available to accommodate the appellant – Dispute pending for very long,*

directions issued u/Art.142 – Protection of Women from Domestic Violence Act, 2005 – Hindu Adoption and Maintenance Act, 1956.

Disposing of the appeal, the Court

HELD: 1.1 The position as it stands now is that the decree of judicial separation stands invalidated and as of now, the appellant is the legally wedded wife of the respondent no.8. She has been out of her matrimonial home since the year 2000. But such right cannot be enforced invoking the writ jurisdiction. Moreover, the original building that constituted her matrimonial home has been demolished. Large portions of the redeveloped building on the same plot has been parted with. Now going by its traditional meaning, her matrimonial home at present would be the premises in which her husband is residing. In this complex perspective, a judicial forum having fact-finding jurisdiction would be the proper forum for adjudicating her claim of this nature. The appellant drew attention to Section 177 of the Maharashtra Housing and Area Development Act, 1976 to contend that disputes arising out of the said Act cannot be adjudicated upon by a Civil Court. But, the dispute raised by her does not arise out of any of the provisions of the 1976 Act. Though she was dishoused as an occupier applying the provisions of the 1976 Act, claim of her rehousing is based on her status as wife of the respondent no. 8. Such claim has to be adjudicated upon by the Civil Court or the Family Court or any other forum the law may prescribe. Such right of the appellant cannot be diffused with the right of her husband under the 1976 Act, whose family property, part of which he is the owner, has been reconstructed. [Para 11][353-C-F]

1.2 The Bombay High Court has in substance non-suited her on the ground that the Writ Court was not the appropriate forum for granting her relief. The Court does not *per se* find any error in such approach. But, in course of this appeal, the husband (respondent no. 8) has filed an affidavit stating that he has set apart the Flat No. 101 in which the appellant could be accommodated. The appellant on the other hand has asserted that the allocation of the same flat was earmarked for one Mr. Nayak Satam, a tenant, as per the plan. Considering the fact that the dispute is pending for a very long time, certain directions

given in exercise of jurisdiction under Article 142 of the Constitution of India which will conclude the dispute. This is having regard to the fact that the builder and the husband of the appellant have uniformly stated that Flat No. 101 in Om Apartment is available to accommodate the appellant. The appellant should be given the choice of occupying that flat as her residence. For this purpose, however, certain cautionary measures are also necessary to ensure that the said flat is not otherwise parted with or encumbered in any form. [Paras 12, 13][353-G-H; 354-A-C]

1.3 In the event, however, the appellant wants to establish her right to reside in her matrimonial home with her husband, she shall be at liberty to approach the Family Court or any other forum of competent jurisdiction, as she may be advised. But in such a situation, she would not be entitled to claim any right specifically in respect of Flat No.101 at Om Apartment on the basis of directions issued in the preceding paragraph including the four sub-paragraphs thereof. The appellant shall vacate her existing accommodation for which expenses appears to have been and continues to be incurred by the Respondent No. 8. The fact of incurring such expense has been pleaded in the additional affidavit filed on behalf of Respondent No. 8, verified on 29th August 2019. Appellant given eight months' time to vacate her present residence. In the event she chooses to opt for Flat No. 101 in "Om Apartment" as her residence, and the other conditions specified in paragraph 13 and its various sub-paragraphs are satisfied, then she shall vacate her present premises from the date she takes possession of the flat at "Om Apartment". Respondent No.8 shall give her possession of the said premises on a date mutually convenient to the appellant and the Respondent No.8 within the aforesaid period of eight months. Otherwise, the course to be taken by her shall be guided by the direction that may be given by a Court of competent jurisdiction, which the appellant may approach. Till the time the appellant retains possession of the present residential accommodation, which period shall not exceed eight months, the respondent no.8 shall continue to pay rent thereof and her possession thereof shall not be disturbed. The obligation of the respondent no.8 to pay rent and ensure peaceful possession of the present

residential unit of the appellant shall not exceed the eight months period, as stipulated. Unless of course, a Court of competent jurisdiction issues any other direction at the instance of the appellant. [Paras 14-16][355-C-H; 356-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7231 of 2012.

From the Judgment and Order dated 15.10.2008 of the High Court of Judicature at Bombay in Civil Writ Petition No. 1398 of 2008.

Bhargava V. Desai, Satyajit A. Desai, Ms. Anagha S. Desai, Chirag M. Shroff, Ms. Mahima C. Shroff, Ms. Yashika Verma, Nitin V. Gangal, Sachin Patil, Ranjit Kumar Rathod, Ms. Sheetal Patil, Advs. for the Respondents.

Appellant-in-person.

The Judgment of the Court was delivered by

ANIRUDDHA BOSE, J.

1. The original writ petitioner, who is the appellant in this proceeding seeks to enforce her right to reside in her matrimonial home. The location of the house where she wants to establish her right to reside is comprised in two flats (nos.601 and 602) in a building situated on plot No.118, Dr. M.B. Raut Road, Shivaji Park, Dadar, in the metropolis of Mumbai. The family of her husband (respondent no. 8) were originally the owners of the said plot, on which stood a residential building known as "Usha". We find from an additional affidavit filed in this proceeding affirmed on 29th August 2019 by the respondent no. 8 that the said building was originally owned by three branches of the "Pusalkar" family in equal proportion. The branch of the respondent no. 8 stemmed from Shivram Dattatryea Pusalkar, carpet area of 1100 sq.ft. comprised of their share. On death of said Shivram Dattatreya Pusalkar, his share devolved in equal proportion to his widow Shobhana Shivram Pusalkar (since deceased), their daughter Gayatri Pratap Puranik and the respondent no. 8. That building upon demolition was redeveloped by a firm of builders, BUILDARCH. Such redevelopment was done after obtaining a no objection certificate from the Mumbai Building Reforms and Reconstruction Board (Board) in terms of the provisions of Maharashtra Housing and Area Development Act, 1976 (1976 Act). Under a scheme approved under the provisions of the said Act, during the period of

redevelopment, the occupants were required to shift to transit or temporary accommodations. The appellant's contention is that such exercise of redevelopment had been undertaken in pursuance of a statutory scheme framed under Section 79 of the 1976 Act which has provisions for rehabilitation of dishoused occupiers. The members of the family of the appellant after her marriage, comprising of her husband and mother-in-law appear to have had shifted to the transit accommodation in the year 2000. The appellant-writ petitioner remained in the original building with her two minor sons. Respondent No. 8, Atul Shivram Pusalkar, however, has claimed that both their sons are major by age now and are working with him in his business. Respondent No. 8 has also stated that one of his two sons is residing with him.

2. As the appellant had continued to reside in the old building, the MHADA authorities issued a notice upon her under Section 95-A of the 1976 Act. The said provision stipulates:-

> "95-A. (1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of the building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupiers, as the case may be, then it shall be binding on all the occupiers to vacate the premises:
>
> Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.
>
> (2) On refusal by any of the occupant to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.
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> (3) Any person occupying any premises, land, building or structure of the Board unauthorisely or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapter VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both."

3. The appellant thereafter had shifted to a temporary accommodation as directed by an order of a Single Judge of the Bombay High Court in Civil Application No. 2967 of 2000. This application was taken out in connection with an appeal arising out of a matrimonial proceeding pending between the appellant and respondent no. 8 at that point of time. We shall refer to that proceeding later in this judgment. On her vacating the premises, redevelopment work stood completed and the new building constructed on the said land was given its identity as "Om Apartment".

4. The mother of the respondent no. 8 passed away before institution of the present appeal. Her interest in this proceeding is being represented by the respondent no. 8 himself and his sister, Gayatri Pratap Puranik (respondent no.9 in this appeal). From the counter-affidavit of the MHADA Authorities, we find that certain arrangement was entered into between the builder and the family of the appellant's husband. Relevant particulars of such arrangement would appear from paragraphs 8 (a) to (e) of the said affidavit of MHADA and the authorities constituted under the 1976 Act (respondent nos. 1 to 4) in this appeal. These paragraphs read:-

"8. (a) The Petitioner's husband (i.e the Respondent No.8 herein), her mother in law and her sister in law (the Respondent No.9 herein) were co-owners of collective 1/3rd undivided share, right, title and interest in the property bearing Plot No. 118, Dr. M.B. Raut Road, Shivaji Park, Dadar Mumbai 400028 and in the old building standing thereon. As such, the petitioner along with her two sons and the said co-owners was in common occupation of a residential premises admeasuring around 1100 sq. ft (carpet) in the old building standing on the said property. The Petitioner has referred to the said old residential tenement as her matrimonial home.

(b) It is learnt that vide an agreement dated 1.07.1999 executed between the said co-owners and the Respondent No. 7, the co-owners had agreed to sell, convey and transfer their collective 1/3rd undivided share, right, title and interest in the said property

A for the consideration and on terms and conditions recorded therein. Under the terms of the said agreement, the Respondent No.7 had agreed to provide to the co-owners as and by way of permanent alternative accommodations, three premises, collectively admeasuring 1100 sq.ft. (carpet) in lieu of area occupied by them in the old building standing on the said property. Being the legally wedded wife of the Respondent No.8, the Petitioner had a right to reside along with her husband in the temporary alternate accommodation and permanent alternate accommodation allotted to him either along with the remaining co-owners or independently.

C (c) As the matrimonial dispute between the Petitioner and Respondent No.8 was going on when the aforesaid agreement was executed, the Respondent No. 7 at the insistence of the Petitioner and the Respondent No.8, provided her an independent temporary alternate accommodation at Room No.20, 1st floor, Balgovinddas Society, Manorama Nagarkar Marg, Matunga, D Mumbai 400016.

(d) The answering respondent has learnt that in pursuance to an Agreement for Assignment dated 16.6.2004 executed between two amongst the said co-owners viz. Smt. Shobhana Shivram Pusalkar (Petitioner's mother-in-law) and Mrs. Gayatri Pratap E Puranik (the Respondent No.9 herein) being the Assignors and the Respondent No.7 being the Assignee, the said Assignors have forever and absolutely assigned and transferred in favour of the Respondent No.7, their respective share i.e. 733 sq.ft.(carpet) area out of 1100 sq.ft. (carpet) area agreed to be allotted to them under the said agreement for consideration and on the terms and F conditions recorded therein. The aforesaid facts have also been deposed by the Respondent No.7 in an affidavit dated 20th October, 2004 filed in Civil Application No.183 of 2004 in Family Court Appeal No.72 of 1997 and Family Court Appeal No.87 of 1997 (Aishwarya Atul Pusalkar Vs. Atul Shivram Pusalkar & Anr.).

G (e) In view of assignment of area by two co-owners, the Respondent No.7 had to provide one flat admeasuring 379 sq. ft. (carpet) to the Petitioner's husband i.e. the Respondent No.8 herein. The Respondent No. 7 has accordingly allotted to the Respondent No. 8 a flat bearing No. 101 admeasuring 379 sq. ft. H (carpet) on the 1st floor of the said building "Om Apartment",

constructed as per the plans lastly approved by the M.C.G.M.(hereinafter referred to as "the said new flat").

5. There is dispute as regards actual area of allocation to the respondent no. 8 and his family by the respondent no. 7 in the new building. The appellant contends such area to be 1816.61 sq. ft., out of which her husband's share would have been 605.53 sq. ft. in "Om Apartment" during the period his mother was alive. The appellant, appearing in-person, has also submitted that such area was comprised in two flats in the sixth floor of the said building, being flat nos. 601 and 602. Her assertion as regards the area of the two flats is based on an approved plan bearing no. EEBP/8145/GN/A of 15th October 2004. An architect's certificate to that effect forms part of Affidavit-in-Rejoinder of the appellant filed in the writ petition before the Bombay High Court, from which this appeal originates. That petition was registered as writ petition No.1398 of 2008. The stand of the respondent no. 7, the builder, however is that the plan dated 15th October 2004 was subsequently amended on 17th February 2006 and 22nd November 2006 and "Om Apartment" had not been constructed in accordance with the plan of 15th October 2004. Both the respondent nos. 7 and 8 have argued that in the new building also, carpet area allocation was 1100 sq. ft. to the branch of the family of respondent no. 8. Out of that area, the deceased mother and sister of the respondent no. 8 had assigned to the respondent no. 7 for valuable consideration their respective shares coming to 733 sq.ft. According to the builder and the respondent no. 8, the latter has been allotted a flat bearing no. 101 having 379 sq.ft. carpet area in the same building. The respondent no. 8 wants the appellant to shift to that flat and in this regard he has affirmed an affidavit on 29th August, 2019 forming part of records of this proceeding. In the verification portion of this affidavit, the residential address of the respondent no. 8 is shown to be "Matushree Pearl, Sitaram Keer Road, Mahim, Mumbai." The appellant at present appears to be residing at 20, Balgovindas Society, Manorama Nagarkar Marg, Mumbai 400016. The Respondent no. 8 has pleaded that this residence was initially provided by the builder as transit accommodation to her but at present he is paying rent for the same. In the writ petition, out of which this appeal arises, she had asked for direction upon MHADA authorities to rehouse her in the said two flats. The other prayers in the writ petition included a mandatory direction for compliance with the plan of 15th October 2004.

A 6. There have been certain parallel developments pertaining to the appellant's matrimonial dispute with her husband. In the Family Court, the husband- respondent no. 8 had been granted a decree of judicial separation in the year 1997. His plea for divorce was not accepted by the Family Court. The decree of judicial separation was passed on 30th July, 1997. Both the appellant and the respondent no.8 appealed against the said judgment and decree before the Bombay High Court. The High Court in a common judgment delivered on 2nd July, 2001 had allowed the appellant's appeal, registered as FCA No. 72 of 1997 and set aside the decree of judicial separation. The appeal of her husband (registered as FCA No. 87 of 1997) against the Family Court's judgment refusing to grant divorce was dismissed. This decision was delivered by the Bombay High Court after she had shifted to her temporary accommodation. The complaint of the appellant is that after the decree of judicial separation was invalidated, her husband and his family have not allowed her to reside in the flats allocated to them in the redeveloped building. She claims in substance that such refusal is in breach of her right to reside in her matrimonial home. It is also her case that as she had vacated the original residential unit on the basis of a statutory notice, she has her right to be rehoused in those flats as part of statutory rehabilitation measure. The appellant thereafter filed the writ petition in the Bombay High Court. The present appeal has been resisted by the MHADA Authorities, the builder (respondent no. 7), her husband (respondent no.8) and the appellant's sister-in-law, respondent no. 9. She was impleaded in this appeal after the demise of original appellant's mother-in-law. These respondents had taken the same stand before the Bombay High Court.

7. The Bombay High Court in the judgment under appeal sustained the plea of the respondents that the right which the writ petitioner (appellant before us) was seeking to establish could not be enforced invoking jurisdiction of the Court under Article 226 of the Constitution of India. It was, inter-alia, observed and held by the Bombay High Court:-

> "6. In our view, the claim of the petitioner is based on her contention that she being legally wedded wife of the 8th respondent and the daughter-in-law of the 9th respondent, the petitioner is entitled to occupy flat Nos. 601 & 602 in the newly constructed building. She is claiming such a right on the basis that Flat No. 601 & 602 constitute her matrimonial home. In our opinion, the present Writ Petition is not an appropriate remedy for the petitioner for

ventilating her such a grievance and that she can agitate such a claim and make such grievances, by adopting appropriate course of action in the Family Court and/or civil Court for the enforcement of her right that she is claiming herein. In view of the nature of controversy involved between the parties, we hold that it is not possible for us to try, entertain and decide the same in exercise of our writ jurisdiction.

7. In view of the aforesaid discussion and the conclusions drawn by us, the present writ petition is dismissed. However, we make it clear that dismissal of this petition will not be a hurdle for the petitioner to seek appropriate relief to which she may be entitled in law, before appropriate form, in a properly constituted proceeding. In case if the petitioner is advised to adopt any such remedy, the observations herein will not be considered one way or the other, while determining the entitlement of the petitioner."

8. Smt. Pusalkar has argued before us in-person that she was removed from her matrimonial home through the statutory mechanism contained in Section 95A of the 1976 Act, which bore the threats of penal measure and summary eviction process. But this was during the time the decree of judicial separation remained operative. She traces the root of her 'dishousing' to a notice dated 10th July 2000 (bearing no. MBR & RB/FN/GN/2136 of 2000) issued by the Board under the 1976 Act. Her case is that it is composite statutory obligation of MHADA, the builder and her husband to rehouse her in her matrimonial home. It is a fact that the said respondents functioned under a statutory scheme while redeveloping the property, commencing from approval of the development scheme, vacating the old building and re-entry into the allocated portion of the redeveloped premises by her husband's family. The appellant was also dishoused from the said building under that scheme. But in our opinion, when a builder has discharged his obligation by accommodating the original owners in the redeveloped portion as per such a scheme, a lady married into that family would not be entitled to invoke the writ jurisdiction of the High Court to enforce her right to matrimonial home citing the provisions of the said statute, if her husband does not permit her to reside in the allocated portion. She does not have any independent claim on title or interest to that property having its genesis in that statute. Her claim of right to reside in her matrimonial home is sought to be projected by her as collateral to the statutory right of her

husband to be rehoused or rehabilitated in the new building. But her right to reside in her matrimonial home stands detached from and is independent of the statutory scheme under the said Act. Neither MHADA, nor the builder can have any further legal obligation to rehouse her. She is staking her claim as a constructive beneficiary of the redevelopment scheme. But our opinion is that the right she is seeking to enforce, though flows from a set of events on the basis of which her husband can claim rehabilitation, is actually anchored to an independent legal principle under the Family Law. We accept that she was an occupier under Section 2 (25) of the 1976 Act, but such occupier status was dependent upon her husband's independent right as part owner of the property. Her right flowing from her matrimonial status cannot get diffused with her right of rehousing or rehabilitation under the statutory scheme. Her right to reside in her matrimonial home does not flow from the 1976 Act.

9. We recognise the appellant's right to reside in her matrimonial home. Such right has a legitimate basis. Though in our view the enforcement mechanism adopted by her to enforce her right is not legally acceptable, a brief discussion on the right she is seeking to enforce is necessary to understand the scope of her claim. A married woman is entitled to live, subsequent to her marriage, with rest of her family members on the husband's side, in case it is a joint-property. If she resides in an accommodation as an independent family unit with her husband and children, the matrimonial home would be that residential unit. This right is embedded in her right as a wife. It is implicit under the provisions of Section 18 of the Hindu Adoption and Maintenance Act, 1956 in situations that statute is applicable. The Protection of Women from Domestic Violence Act, 2005 has recognised the concept of "shared household" in terms of Section 2(s) of this statute. Alienating an immovable asset to defeat the right of a victim lady under the said Act can constitute domestic violence, coming, inter-alia, within the ambit of the expression "economic abuse" under Section 3(iv) of 2005 Act. A Magistrate having jurisdiction under Section 19 of the said Act is empowered to pass a residence order to protect a victim of domestic violence from being removed from her shared household. But for a husband to compel his wife to live in a separate household, which is not her matrimonial home, an order from appropriate legal forum would be necessary. There cannot be forcible dishousing of a wife from her matrimonial home.

10. The respondent no. 8 claims that the appellant could be accommodated in Flat no. 101 of the same building. But the appellant's stand is that the said flat stands allocated to another tenant and she is being offered that flat with malafide intention. She has staked her claim on her right to residence in the matrimonial home, which according to her is comprised in the said two flats bearing nos. 601 and 602. From the materials available, it appears that interest in those flats have been surrendered by the paternal family members of the respondent no.8.

11. There appears to be some matters pending in different fora in relation to the matrimonial dispute between the appellant and the respondent no.8. But we have not been apprised of particulars of such matters. The position as it stands now is that the decree of judicial separation stands invalidated and as of now, the appellant is the legally wedded wife of the respondent no.8. She has been out of her matrimonial home since the year 2000. But such right cannot be enforced invoking the writ jurisdiction. Moreover, the original building that constituted her matrimonial home has been demolished. Large portions of the redeveloped building on the same plot has been parted with. Now going by its traditional meaning, her matrimonial home at present would be the premises in which her husband is residing. In this complex perspective, a judicial forum having fact-finding jurisdiction would be the proper forum for adjudicating her claim of this nature. The appellant drew our attention to Section 177 of the 1976 Act to contend that disputes arising out of the said Act cannot be adjudicated upon by a Civil Court. But as we have already observed, the dispute raised by her does not arise out of any of the provisions of the 1976 Act. Though she was dishoused as an occupier applying the provisions of the 1976 Act, claim of her rehousing is based on her status as wife of the respondent no. 8. In our opinion, such claim has to be adjudicated upon by the Civil Court or the Family Court or any other forum the law may prescribe. Such right of the appellant cannot be diffused with the right of her husband under the 1976 Act, whose family property, part of which he is the owner, has been reconstructed.

12. Now the question arises as to whether any relief can be granted to the appellant in this appeal. The Bombay High Court has in substance non-suited her on the ground that the Writ Court was not the appropriate forum for granting her relief. We do not per se find any error in such approach. But, in course of this appeal, the husband (respondent no. 8)

A has filed an affidavit stating that he has set apart the Flat No. 101 in which the appellant could be accommodated. The appellant on the other hand has asserted that the allocation of the same flat was earmarked for one Mr. Nayak Satam, a tenant, as per the plan.

13. Considering the fact that the dispute is pending for a very long
B time, we shall be giving certain directions in exercise of our jurisdiction under Article 142 of the Constitution of India which we hope will conclude the dispute. We shall do so having regard to the fact that the builder and the husband of the appellant have uniformly stated that Flat No. 101 in Om Apartment is available to accommodate the appellant. For this reason,
C in our opinion, the appellant should be given the choice of occupying that flat as her residence. For this purpose, however, certain cautionary measures are also necessary to ensure that the said flat is not otherwise parted with or encumbered in any form:-

(a) The Respondent Nos. 1 and 2 shall disclose to the appellant in writing as to whether the Flat no. 101 of "Om Apartment"
D standing on Plot No.118, Dr. M.B. Raut Road, Shivaji Park, Dadar having 379 sq.ft. carpet area is free for allocation to the respondent no. 8 or not. This disclosure shall be made to the appellant within a period of two months from the date of communication of this order to the Respondent Nos. 1 and 2.

E (b) Within one month from the date such disclosure is communicated to the appellant in writing, the appellant shall take a decision as to whether she will accept the offer to be accommodated in said flat no. 101. The appellant shall inform the respondent no. 1, 2, 7 and 8 her decision in writing within
F the aforesaid timeframe of one month.

(c) The husband, that is the respondent no. 8, shall also give an undertaking in the form of an affidavit affirmed before a Judicial Magistrate of First Class stating therein in clear terms the nature of right he exercises over that flat along with copies
G of documents to establish such right. That affidavit shall also contain an unequivocal undertaking that he would not in any way disturb possession of the appellant in the said flat. The affidavit shall also disclose that the respondent no. 8 has not created any form of encumbrance over the said flat. Such affidavit shall be given within a period of one month from the

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date the appellant communicates in writing her willingness to be accommodated in flat no. 101.

(d) If there is no bar in allocating the said flat to the appellant on the basis of re-development plan or any other instrument supplemental or ancillary thereto, and the appellant accepts the offer of being accommodated in the said flat bearing no.101, then the appellant shall vacate her present accommodation and settle in that flat bearing no.101 in Om Apartment within a further period of four months. This would be subject to the respondent no.8 giving undertaking in the form of affidavit as directed in the preceding sub-paragraph.

14. In the event, however, the appellant wants to establish her right to reside in her matrimonial home with her husband, she shall be at liberty to approach the Family Court or any other forum of competent jurisdiction, as she may be advised. But in such a situation, she would not be entitled to claim any right specifically in respect of Flat No.101 at Om Apartment on the basis of directions issued by us in the preceding paragraph including the four sub-paragraphs thereof.

15. The appellant shall vacate her existing accommodation for which expenses appears to have been and continues to be incurred by the Respondent No. 8. The fact of incurring such expense has been pleaded in the additional affidavit filed on behalf of Respondent No. 8, verified on 29th August 2019. We give appellant eight months' time to vacate her present residence at A/20, Bal Govinddas Society, Manorama Nagarkar Marg, Mahim Mumbai. In the event she chooses to opt for Flat No. 101 in "Om Apartment" as her residence, and the other conditions specified in paragraph 13 and its various sub-paragraphs are satisfied, then she shall vacate her present premises from the date she takes possession of the flat at "Om Apartment". Respondent No.8 shall give her possession of the said premises on a date mutually convenient to the appellant and the Respondent No.8 within the aforesaid period of eight months.

16. Otherwise, the course to be taken by her shall be guided by the direction that may be given by a Court of competent jurisdiction, which the appellant may approach. Till the time the appellant retains possession of the present residential accommodation, which period shall not exceed eight months, the respondent no.8 shall continue to pay rent

A thereof and her possession thereof shall not be disturbed. The obligation of the respondent no.8 to pay rent and ensure peaceful possession of the present residential unit of the appellant shall not exceed the eight months period, as stipulated by us. Unless of course, a Court of competent jurisdiction issues any other direction at the instance of the appellant.

B 17. With these directions, the appeal shall stand disposed of. All connected applications are disposed of. Interim orders, if any, shall stand dissolved. There shall be no order as to costs.

Divya Pandey Appeal disposed of.