

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9640 OF 2015

Sangam Co-operative Housing Society Ltd	.. Petitioner
Versus	
The Tahsildar, Kurla (Mulund)	
Maharashtra State and Others	.. Respondents

**ALONGWITH
CIVIL APPLICATION No.2900 of 2015
IN
WRIT PETITION NO.9640 OF 2015**

Vandana S. Palkar and Others	.. Interveners (Prop. Petitioners)
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In the matter of :

Sangam Co-operative Housing Society Ltd.,	.. Petitioner
Versus	
The Tahsildar, Kurla (Mulund)	
Maharashtra State and Others	.. Respondents
And	
Vandana S. Palkar and Others	.. Interveners (Prop. Petitioners)

Mr. Sanjiv Sawant a/w Mr. Abhishek P. Deshmukh for the Petitioner.
Mr. Manoj Harit for Applicant in C.A. No.2900 of 2015.
Mr. S.D. Rayrikar, Assistant Government Pleader for the State.
Mrs. Joglekar for the BMC.

**CORAM : A.K. MENON, J.
DATED : OCTOBER 30, 2015**

P.C. :

1. The present Writ Petition is filed challenging the order dated 24 September 2015 passed by Respondent No.1, whereby

Respondent No.5 was directed to take the charge and hand over all the office records of the Petitioner-society from the Managing Committee of the Petitioner-society to the Respondent No.4 who has been appointed as an Administrator in the instant case. The Petitioner-society claims to be owner of a building situate at Barrister Nathpai Nagar, Ghatkopar East, Mumbai-400 077 which was constructed in the year 1979. A majority of the members have adopted a resolution to develop the building and steps were taken for appointment of a developer. It is the Petitioner's case that between 27 February 2005 and 23 January 2013, attempts were made to proceed with redevelopment of the building.

2. On 23 January 2013, the Petitioner-society had taken charge of the project and several meetings were held for considering redevelopment and reconstruction of the building. There appears to be some differences of opinion amongst the members and some members have refused to vacate the flats, as a result work could not be commenced. Certain members have given their consent, stated to be irrevocable, for redevelopment of the property and some amounts have been paid to members of the Petitioner-society.

3. On 7 February 2015, the Executive Engineer issued notice to the Petitioner-society to submit a fresh structural audit report along with Non Destructive Test (NDT) report. The Structural Engineer has opined that structure is not suitable for repairs. It is case of the Petitioner-society that some of the members who are in minority are opposing the redevelopment of the building and 9 members out of 17 occupants/members who are opposing the redevelopment of the building of the society are not staying in the building and they have let their premises on leave and license basis.

4. It is submitted that the Petitioner-society is looking after the day to day affairs of the society, including pursuing the said matter with BMC for safeguarding the building which is otherwise in dilapidated condition. On 16 September 2015, the Municipal Corporation issued notice to the Petitioner-society under Section 354 of MMC Act stating that the building is in a dangerous condition. The committee members are pursuing the matter with the BMC Authorities and therefore, elections are not yet held.

5. I have heard Mr. Sawant, the learned Counsel for the Petitioner-society at length. It is submitted in support of various

contentions taken that there are ample reasons why the elections are not been held. In the meantime, Respondent No.3 vide order dated 8 September 2015 has appointed Respondent No.4 as an Administrator to take charge. It is submitted that the order dated 8 September 2015 is subject matter of challenge in an appeal which is pending. The appeal is scheduled to be heard on 23 November 2015.

6. The learned Counsel for the Petitioner-society states that the application for stay has been made and the same is pending before the Appellate Authority and in the meantime pursuant to the impugned order forcible possession of the records is sought to be taken by police officers from the Pant Nagar Police Station who asked the Petitioner to vacate the flats and hand over the records of the society.

7. It is on the basis, the Petitioner-society had moved this Court for urgent orders. On 1 October 2015, the learned Assistant Government Pleader was directed to file an Affidavit on or before 12 October 2015 and this Court granted limited protection against enforcement of impugned order dated 24 September 2015, on the basis of the statement by Mr. Sawant on instructions of the

Petitioner-society that they only needed some time to vacate the premises and that they would be file an undertaking to that effect. Mr. Sawant, the learned Counsel in the course of his arguments today submitted that the interim protection be continued for some more time as the Petitioner needed some further time to vacate the flats and that the Petitioner is also ready to hand over the records to Respondent No.4. According to the learned Counsel for the Petitioner, an undertaking has been filed on 9 October 2015 with the Registrar to the effect that 19 persons mentioned in the undertaking will vacate the premises pursuant to the notice under Section 354 of MMC Act. This undertaking came to be accepted. Accordingly, the petition was listed for further hearing for admission.

8. In the meanwhile, Respondent No.3 has filed an Affidavit in Reply in which it is contended that by order under Section 77A(B), (B-1) and Section 78A(1) of the Maharashtra Co-operative Societies Act, 1960 dated 8 September 2015, the Managing Committee of the Petitioner-society was dissolved and Respondent No.4 has been appointed as Administrator. The tenure of the Managing Committee came to an end on 1 August 2014 and it was necessary to hold elections, but the records are not handed over by

the society. In paragraph-5 of the Affidavit, the deponent states that the authorized officer made several visits to society and requested them to hand over charge of the records of the society to hold the elections, however, the Petitioner-society has failed to co-operate and therefore, being satisfied that the Petitioner-society is unable to hand over the charge of the records, the deponent requested Tahsildar & Magistrate, Kurla (Mulund) vide letter dated 14 September 2014 to take forcible possession of the records of the society. It is on this basis that the impugned order came to be passed under Section 80 of the Maharashtra Co-operative Society Act, 1960. He therefore, states that the same has been issued following due process of law.

9. In an Additional Affidavit dated 1 October 2015, the Chairman of the Petitioner-society has reiterated the visit by the Police Officer to the Petitioner-society and he has reiterated the Petitioner's resolve to vacate the premises.

10. An intervention application has also been filed being Civil Application No.2900 of 2015. These Interveners /Applicants claim to be members of the society and holding premises in the society. It is contended by the Applicants that the petition has been

filed by suppressing various facts in order to gain sympathy of the Court. The Petitioner has deliberately not impleaded them as parties i.e. the members who are opposed to the redevelopment as proposed. It is submitted that the Petitioner-society is misleading the Court and the impugned order has been correctly passed.

11. The Applicants have served the Petitioner-society but no reply is filed to the application. Various allegations have been with which we are not concerned in this petition. Suffice is to say that the various contentions in the Civil Application are uncontroverted. Although the Applicants have sought intervention, in view of the order that I intend to pass, it will not be necessary to permit them to intervene in the petition and especially since their contentions have already been placed before this Court.

12. On behalf of the Mumbai Municipal Corporation of Greater Mumbai, Mrs. Joglekar, the learned Counsel states that four of the Applicants have filed a suit in the City Civil Court, Bombay being L.C. Suit No.2436 of 2015, seeking a restraint on further action in pursuance to the notice issued under Section 354 of M.M.C. Act and an ad-interim order is in operation till next date. The

Corporation has been restrained from proceeding further pursuance to the notice Section 354. The Corporation has been directed to get the property inspected by a Technical Advisory Committee as per the guidelines specified by this Court and accordingly, after the report is submitted, further action can be contemplated. Thus, as of today, the aforesaid Plaintiffs who were opposing to redevelopment are challenging the notice.

13. Today we are concerned only with the reliefs sought in the petition and having considered all the facts, I am of the opinion that since the appeal against the order dated 8 September 2015 is yet to be heard, it is always open to the Petitioner to urge all the contentions in the said appeal. Admittedly, the Petitioner-society also applied for stay of the order dated 8 September 2015, but the stay application is not yet heard.

14. Filing of this petition, in my opinion, was merely a dilatory tactic adopted by the persons claiming to be in the management of the society and in order to thwart the attempt to take possession. In the circumstances, the appeal is already pending and awaiting adjudication, it will be open for the Petitioner-society to

urge the same in accordance with law. So also, the Applicants in the Intervention Application, having filed the suit, will be entitled to urge the said suit which is filed only against the Corporation. In view of the aforesaid factual position, the Petitioner is not entitled to any reliefs in the Petition and needless to mention, the parties are at liberty to seek remedy available without being influenced by observations in this order, it is not necessary to continue the ad-interim order dated 1 October 2015. I, therefore, pass the following order.

: O R D E R :

- (A) The Writ Petition is dismissed. Ad-interim order dated 1 October 2015 stands vacated.
- (B) There will be no order as to costs.
- (C) In view of dismissal of the Writ Petition, the Civil Application No.2900 of 2015 does not survive, is accordingly disposed of.

(A.K. MENON, J)