

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.793 OF 2015
IN
WRIT PETITION NO.3763 OF 2007
WITH
CIVIL APPLICATION NO.2484 OF 2014
IN
WRIT PETITION NO.3763 OF 2007

Sagar Tirth Co.op. Housing Society Ltd. & Anr. ... Applicants

In the matter between

Sagar Tirth Co.op. Housing Society Ltd. & Anr. ... Petitioners

vs.

Shri Babaram Pandurang Kadam & Ors. ... Respondents

Mr.G.W. Mattos for the Respondent No.1, 2(a) to 2(e) in CAW/2484/2014.

Mr.U.P.Warunjikar for the Applicants in CAW/2484/2014.

Mr.Vipul Shukla i/b Mr.Jayesh Ramesh Vyas for the Added Respondent in CAW/793/2015.

Mr.Lahoo Bhagwan Kolamkar, Secretary, Sagar Tirth Co.op. Housing Society Ltd., Gawanpada, Mulund (East), Mumbai.

CORAM : A. K. MENON, J.
DATE : OCTOBER 19, 2015.

P.C.

1] This application is taken out by the Petitioners Society seeking the permission to carry out redevelopment of the Society's building. The application proceeds on the basis that the applicant's building is in a dilapidated condition. In paragraph 10 of the application the applicants has stated that the building is in bad condition and requires extensive work as revealed by a structural audit. Internal

repairs and external repairs would cost substantial amounts and therefore, in a Special General Body meeting of the Society held on 19th October, 2014, the Society decided to explore the possibility of redevelopment of the property, since repairs are beyond the financial means of the members. The Petitioners and the original Respondent Nos.1 and 2 (at present heirs of Respondent No.2) are claiming to be entitled of two flats in the building of the Society being flat numbers 3 and 20, admeasuring 405 and 395 sq.ft. carpet area respectively on the basis that they were wrongfully deprived of these flats. The aforesaid Respondents had succeeded before the Maharashtra State Co-operative Appellate Court, which directed the Petitioner Society to handover the possession of these two flats to the Respondent No.1 and legal heirs of the Respondent No.2 upon against payment of the construction cost.

2] Mr.Mattos appearing on behalf of the Respondent No.1 and 2(a) to 2(e) states that second part of the order impugned in the Petition namely payment of construction cost had already been made. The Society had been paid construction cost in respect of two flats. However, the Petitioner Society has challenged the order of the Appellate Court by filing the present Petition which came to be admitted by an order dated 6th July, 2007 and as on date an ad-interim order operates against the Respondents, whereby the order of the Co-operative Appellate Court dated 3.1.2007 in Appeal No.5 of 2006 remains stayed.

3] Today, when the Civil Application is called for hearing Mr.Warunjikar the learned counsel appearing for the Society submitted that in view of the pendency of the Writ Petition the Society thought it feet to inform this Court that proposals to redevelop the property are under consideration, so as to obviate any challenge to the same at a belated stage.

4] The learned counsel for the Respondent No.1 and 2(a) to 2(e) have submitted that in the event of such redevelopment there may be benefits which the existing flat holders may derive which benefits must also be provided to the Respondents. In this behalf Mr.Mattos submitted that the said Respondents also taken out a Civil Application No.793 of 2015 wherein he has sought to a direction the Respondent No.1, (who has been added as a party in the Civil Application No.793 of 2015 as a Respondent) since he had prepared a Structural Audit report as a professional consultant in respect of the proposal for redevelopment.

5] Prima facie, the purpose of this Civil Application No.793 of 2015 is only to ensure that if the Society is likely to get additional FSI on redevelopment then the Respondents should not be deprived of their share in the redeveloped area. This can conveniently be protected. Mr.Warunjikar has obtained instructions of the Society from the Secretary of the Society who is present in Court, to make a statement

to the effect that in the event of redevelopment all members of the Society will derive benefit commensurate with the area of flats occupied by them. Accordingly, he submitted that in the event of the Petitioner not succeeding in the present Writ Petition and the building being redeveloped, the Respondent Nos.1 and 2(a) to 2(e) will be entitled to two flats in the redeveloped building of an area commensurate that other members occupying flats of similar size. The statement is accepted.

6] Mr.Warunjikar submitted that it is not as if the flat nos.3 and 20 are vacant but the same are being occupied by other members of the Society. This is not disputed by any of the parties . It is made clear that by this order the Court has not specially permitted redevelopment of the Society. However, it is open to the Society to take steps as per law as may be permissible.

7] In view of the said statement of Mr.Warunjikar on instructions of the Society Mr.Mattos does not to press with Civil Application No.793 of 2015, on instructions of the Respondent No.1 and Respondent No.2(a) and 2(b) (who are present in Court). In the circumstances, both the aforesaid Civil Applications are disposed of by passing following order;

- (i) Civil Application 793 of 2015 and Civil Application No.2484 of 2014 stand dismissed.
- (ii) In the event the Petitioners Society redeveloping its property, the Society will ensure that the plans submitted will provide that in the new building two additional flats of the same size as flat no.3 & 20 are provided to the Society free of cost, so as to enable the Petitioners Society to allot these flats to the Respondent Nos.1 and 2(a) to 2(e). In the event additional area is provided to present occupants, such additional area will be provided in the two additional flats so that the Respondent Nos.1 and 2(a) to 2(e) will be entitled to an enhanced area, subject to the further orders that may be passed in the main Writ Petition No.3763 of 2007.

(A. K. MENON, J.)