

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.126 OF 2015**

Dr Ranajit S. Mukherjee	... Petitioner
v/s	
The State of Maharashtra and anr.	... Respondents

Mr Owen Menezes i/b Mr Johnson John for Petitioner.
Mr Milind More, AGP for Respondent No.1.
Mr S.S. Kumbhar for Respondent No.2.
Mr Ashish Kamat i/b Mr V.N. Tendulkar for Respondent No.3.

**CORAM: V.M. KANADE &
B.P. COLABAWALLA JJ.**

**Reserved on : 17th June, 2015
Pronounced on : 1st July, 2015**

JUDGMENT / Per B. P. Colabawalla J.] :-

1. The Petitioner is a member of a housing co-operative society known as the “Navbharatiya Bhavan (1) Co-op. Hsg. Soc.

Ltd. (Respondent No.2). By this Petition, challenge has been laid to the order dated 1st November, 2014 passed by Respondent No.1 granting a No Objection for re-development of the building known as “*Nav Bharatiya Bhavan (1) Co-operative Housing Society Ltd*” (**the “said building”**). The said building belongs to Respondent No.2 – Society and is situate on a plot of land admeasuring about 853 sq. yards or thereabouts and bearing Plot No.371 of Suburban Scheme No.III, Chembur, bearing CTS No.1316, 1316/1 to 4. The Petitioner is also seeking a declaration that the Development Agreement dated 28th October, 2014 entered into between Respondent No.2 – Society and Respondent No.3 – Developer (Heritage Lifestyles & Developers Pvt. Ltd.), is null and void as the same is in violation of the mandatory circular dated 3rd January, 2009 issued under section 79A of the Maharashtra Co-operative Societies Act, 1960.

2. The brief undisputed facts giving rise to the present controversy are that the Petitioner is a doctor by profession and runs a clinic from the premises occupied by him in Respondent No.2 – Society. Since Respondent No.2 – Society decided to redevelop its

property, in their AGM on 13th August 2006, Respondent No.2 passed a resolution to discuss the proposal of re-construction of the said building. The Petitioner was present at the said meeting as the Chairman of Respondent No.2. At the said meeting, the proposal for re-construction of the said building was considered and all members unanimously agreed to this proposal.

3. Thereafter, at the AGM held on 10th August 2008, again the proposal for re-construction of the said building was discussed. At this meeting also, the Petitioner was present as the Chairman of the said Society. Thereafter, the 2nd Respondent – Society received bids for re-development of the said building from (i) Maya Developers on 15th September, 2008; (ii) Mishal Construction Pvt. Ltd. on 3rd October, 2009; (iii) Menorak Realities Pvt. Ltd. on 9th March, 2010; (iv) KCD Infrastructure Pvt. Ltd. on 25th March, 2010; and (v) M/s Heritage Lifestyles and Developers Pvt. Ltd. on 1st January, 2011 (Respondent No.3 herein).

4. It would be important to note that Respondent No.2 –

Society did not have a conveyance of the land on which the said building was standing. Accordingly, in the Special General Body Meeting held on 23rd October 2011, the Memorandum of Understanding received from Respondent No.3 was discussed. In the said MOU Respondent No.3 had agreed to get the conveyance done in favour of the Society and in turn, they expected from the Society the re-development rights as per the terms and conditions mentioned in the MOU. After a thorough discussion as reflected in the minutes of the said meeting, it was resolved as under :-

“RESOLVED THAT, after considering the proposal of M/s Heritage Lifestyle and Developers Pvt. Ltd., 401/402, 4th Floor, Plot No.29, Vinayak Siddhi, D.K. Sandu Marg, Opp. Sai Baba Temple, Chembur, Mumbai 400 071, subject to M/s Heritage Lifestyle and Developers Pvt. Ltd. getting Conveyance to the Society, approval be and is hereby given for granting permission to M/s Heritage Lifestyle and Developers Pvt. Ltd. for redevelopment of the Society's property on the terms and conditions, stipulations and undertakings stated in the draft Memorandum of Understanding placed before the General Body, discussed and initiated by the Chairman and Secretary for identification.

RESOLVED further that the MOU be signed by all members.

RESOLVED further that the Managing Committee be and is hereby authorized to do all the things that are necessary to carry on the execution of the project of redevelopment, make necessary applications to various authorities and exercise a power of attorney and other matters as stipulated in the MOU.”

(emphasis supplied)

5. At this meeting also, the Petitioner was present. In fact, the Petitioner in the said meeting stated that since there was a legal case pending, his lawyer had advised him not to sign any document and therefore he excused himself from signing the MOU. In the said meeting the Petitioner further stated that only after getting the conveyance, the Society should go ahead with the redevelopment and hence, the minutes were recorded that all have agreed to go ahead with Respondent No.3 and sign the MOU given by them.

6. Pursuant to the said Resolution, Respondent Nos.2 and 3 entered into a MOU dated 24th October, 2011. On the basis of the aforesaid MOU, and being one of its obligations thereunder, Respondent No.3 got a deed of assignment of lease (conveyance) dated 2nd June, 2012 executed and registered in favour of Respondent No.2. The stamp duty on the said conveyance was also paid by Respondent No.3 on behalf of Respondent No.2 and the same was duly registered with the Sub-Registrar, Kurla I (Kurla). As Respondent No.3 had obtained the conveyance in favour of

Respondent No.2, on 26th October 2014, Respondent No.2 passed a resolution in their Managing Committee Meeting for execution and registration of the Development Agreement and the General power of Attorney in favour of Respondent No.3. On the basis of the aforesaid resolution, Respondent No.2 executed a Development Agreement as well as a General Irrevocable Power of Attorney, both dated 28th October, 2014 in favour of Respondent No.3. The said Development Agreement as well as the General Irrevocable Power of Attorney have been duly stamped and registered with the Sub-Registrar, Kurla I (Kurla). Respondent No.2 also entered into a Supplementary Development Agreement dated 29th October, 2014. After entering into the aforesaid Agreements, Respondent No.2 also obtained a No Objection Certificate dated 1st November, 2014 from the office of Respondent No.1 (which is impugned in this Petition).

7. Thereafter, pursuant to the resolution passed in the Special General Body Meeting held on 2nd November 2014, Respondent No.2 disbursed cheques for 70% (Rs.700 per sq.ft.) of the corpus fund to all the members of Respondent No.2 wherein the Petitioner was also

present and received the cheques. In the minutes of the said meeting, it is recorded that the Petitioner would sign the receipt for the cheques as well as the affidavit-cum-declaration for his two flats only after meeting the developer and discussing with them. It is further recorded that he carried with him the cheques and declaration form alongwith copies of the agreements and the draft plan. We must mention here that it is the case of the Petitioner that the illegalities committed by Respondent No.2 – Society were realised by him only at that time and therefore he did not encash the said cheques and has returned the same to the 2nd Respondent Society.

8. Thereafter, by a letter dated 12th November 2014, the Petitioner informed the Secretary of the 2nd Respondent – Society that on going through the documents, the Petitioner found that the Development Agreement did not support any of his needs and therefore, he could not agree to handover his premises to Respondent No.3 – Developer. This letter is of some importance and is therefore referred to in detail later in this judgement.

9. In reply to the aforesaid letter, Respondent No.2 inter alia clarified that at no point of time, the Society had agreed to give permission for commercial practice in the new building. It was stated that while taking the Petitioner as a member in 1997, the Society had made it clear to him that the Society does not permit any member to use their respective premises for a commercial purpose. At that time the Petitioner had assured that he would use his premises only as a “*residence-cum-clinic*”. It was further stated that a copy of the Petitioner's letter dated 2nd November, 2014 was circulated to all the members to get their views and all of them were of the unanimous opinion that the Society should not give permission to the Petitioner to allow him to use his premises for a commercial purpose.

10. In this background, Mr Menezes, the learned counsel appearing on behalf of the Petitioner, submitted that there have been gross violations of the circular dated 3rd January, 2009 issued by the Government of Maharashtra under Section 79A of the Maharashtra Co-operative Societies Act, 1960. He submitted that this circular has statutory force and has to be mandatorily followed by the 2nd

Respondent Society when it chooses to undertake redevelopment of its building. According to him, this circular has not been scrupulously followed by Respondent No.2 – Society and therefore, the Development Agreement dated 28th October, 2014 as well as the NOC issued by Respondent No.1 dated 1st November, 2014 ought to be set aside. The main contention of Mr. Menezes is that this circular contemplates competitive bidding whilst inviting tenders for redevelopment. According to him, in the present case, there was no competitive bidding that has taken place and therefore the Development Agreement dated 28th October, 2014 was null and void. Mr. Menezes further argued that Respondent No.2 – Society asked for the NOC of Respondent No.1 by their letter dated 31st October, 2014 and the said NOC was granted by the letter dated 1st November, 2014. This itself denotes that there was undue haste in issuing the NOC and that the NOC given by Respondent No.1 was without any application of mind and was arbitrary, null and void. On all these counts Mr. Menezes submitted that this was a fit case for this Court to exercise its equitable jurisdiction and declare that the Development Agreement dated 28th October, 2014 as null and void and further that the NOC

issued by Respondent No.1 dated 1st November, 2014 be quashed and set aside.

11. On the other hand, Mr. Kamat, the learned counsel appearing on behalf of Respondent No.3, submitted that the present Petition was not *bonafide* and the Petitioner had not approached this Court with clean hands. He submitted that looking to the facts of the present case, the Petitioner had all along participated in the proposal for re-development of the said building and in fact had attended all the meetings referred to earlier. It is only when the 2nd Respondent Society refused to give permission to the Petitioner to use the premises in his possession for commercial purposes, that the present Petition has been filed. He submitted that out of 12 members of the 2nd Respondent Society, 11 have agreed to the grant of re-development of the said building and have further agreed that the said task ought to be given to Respondent No.3. He submitted that looking to the facts of this case, in any event of the matter, there has been substantial compliance with the circular dated 3rd January, 2009 which is in any event for the benefit of the members of the society. The

learned counsel further submitted that no other member has taken any objection regarding the alleged violation of the said circular and it is only now for the first time that the Petitioner is contending that there has been violation of the said circular dated 3rd January, 2009. He, therefore, submitted that the present Petition lacks *bonafides* and the same ought to be dismissed.

12. We have perused the papers and proceedings in the present Writ Petition and heard the counsel at great length. We find considerable force in the argument of Mr. Kamat that the present Petition is not a *bonafide* one. It is important to note that at the Special General Meeting held on 23rd October 2011, the Memorandum of Understanding received from Respondent No.3 was discussed. The reason why the 2nd Respondent Society decided to engage the services of Respondent No.3 was because Respondent No.3 had agreed to get a conveyance of the land in favour of the Society on which the said building stood. Only once the conveyance was obtained by Respondent No.3 in favour of Respondent No.2 that the work of re-development was to be entrusted to Respondent No.3.

At this meeting, the Petitioner was very much present and did not raise any objection for entering into the said Memorandum of Understanding with Respondent No.3. At the said meeting, the Petitioner never once attributed any *malafide* in the decision making process of the 2nd Respondent Society in engaging the services of Respondent No.3 or that the procedure followed by Respondent No.2 was in violation of the circular dated 3rd January, 2009. In fact, at the said meeting, the Petitioner reiterated that the re-development work ought to be given to Respondent No.3 only after the conveyance was obtained as envisaged in the MOU. Respondent No.3 fulfilled its obligation under the Memorandum of Understanding by obtaining a conveyance in favour of Respondent No.2 and paying the stamp duty and registration charges thereon. We, therefore, find that the Petitioner not having objected to the Memorandum of Understanding dated 24th October 2011, under which Respondent No.3 was to get conveyance of the land in favour of the Society and in turn the Society was to grant re-development rights to Respondent No.3, cannot now today assail the Development Agreement dated 28th October, 2014 or the NOC dated 1st November 2014 issued by

Respondent No.1. The Development Agreement has been executed only as a consequence and in furtherance of the MOU dated 24th October 2011. The Petitioner not having objected to the execution of the said MOU at any time, he today cannot assail the Development Agreement dated 28th October 2014.

13. We find that under the Memorandum of Understanding, Respondent No.3 – Developer fulfilled its obligation to get the conveyance in favour of the Society and it is because of this that the 2nd Respondent Society has entered into the Development Agreement dated 28th October, 2014. Not having objected to the MOU being entered into with Respondent No.3, the Petitioner now cannot contend that the re-development entrusted to Respondent No.3 is in violation of the circular dated 3rd January, 2009. Respondent No.3, after fulfilling its obligations under the MOU by getting a conveyance in favour of the 2nd Respondent Society, cannot be sought to be ousted in this fashion at the instance of one disgruntled member. This is more so when the Petitioner did not raise any objection at the time of entering into the MOU with Respondent No.3 and in fact stated that

the re-development should be entrusted to Respondent No.3 only after he obtains a conveyance of the land in favour of Respondent No.2 – Society. We must also mention that even in the Petition, the Petitioner has categorically stated that he is not in principle opposed to re-development of the said building. The case in the Petition is that, some vested interests in the Society are bent on entrusting the work for re-development to their favoured developers. We find this argument wholly without merit. As stated earlier, when the Society had decided to enter into the Memorandum of Understanding dated 24th October, 2011 with Respondent No.3, all the members of the 2nd Respondent Society agreed to the same. The Petitioner was very much present at the said meeting and never objected to the said MOU being entered into with Respondent No.3, and in fact stated that the re-development should be entrusted to Respondent No.3 only after it obtains a conveyance of the land in favour of Respondent No.2 – Society. This, Respondent No.3 has admittedly done. We therefore find no merit in this argument.

14. There is yet another reason why we have come to the

conclusion that the present Petition is not *bonafide* and are therefore not inclined to exercise our equitable jurisdiction under Article 226 of the Constitution of India. In this regard, it is important to note the contents of the letter written by the Petitioner to Respondent No.2 on 12th November, 2014. On perusing the said letter it is clear that the real grievance of the Petitioner appears to be that his demands are not taken care of, which is why there is opposition to the re-development. On perusing of the said letter it is clear that the Petitioner wants to use his premises for a commercial purpose for which there is opposition and therefore the present Petition. The relevant portion of the said letter reads as under:-

*“Dear Sir,
I wish to congratulate the members and the managing committee for having successfully negotiated the re-development into a reality much to the happiness of all.*

Unfortunately I am not able to feel quite the same way as my needs have not been looked into, as the clinic is the sole means of my livelihood. Though I was repeatedly assured by the Managing Committee members over the last few years, that the developer would meet me personally to settle my requirements and needs for redevelopment, it has not happened till this day.

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On Saturday, 01/11/2014, I received telephonic information at 11 pm to inform me of the meeting on Sunday, 02/11/14 at 10 am, wherein I was handed to file much to my amazement, containing the registered and stamped Development Agreement and Supplementary Development Agreement, along with 2 cheques dated 21/10/2014, drawn on Vijaya Bank, Powai, of Rs.4,62,000/- (cheque no.-494902) and Rs.3,71,000 (cheque no.-494901) with two copies of affidavit-cum-declaration. This came as a total surprise to me as I was not informed of the proceedings in this matter.

Due to want of time, I could not peruse the documents earlier, though I went through them today. I find that the development agreement does not support any of my needs and therefore I cannot agree to hand over my premises to the developer. The agreement does not mention:

- 1. -the availability of commercial premises after redevelopment, for my continuance as surgical clinic with separate entrance.*
- 2. -there is no mention of the additional areas included in the clinic premises after having paid the premium for such inclusion to the society earlier.*
- 3. -there is no mention of the closed garage that is in my possession.*
- 4. -there is no building plan and to which floor I will be accommodated.*
- 5. -there is no mention of my shifting to a commercial premise to continue my practice during the period of redevelopment.*
- 6. -the corpus is absolutely inadequate and compensations for furnishings and fixtures do not find any mention.*

I look forward to share space with the members as a family and do not in any way wish to come in the way of redevelopment, and do sincerely hope that you and the members would find an early solution to this, as I can in no way give consent unless my above needs are met."

(emphasis supplied)

15. This letter very eloquently sets out the motive behind the present Petition. Even in this letter there is no allegation that Respondent No.3 is being favoured or that there has been any violation of the circular dated 3rd January, 2009. In this letter, the grievance of the Petitioner is that his demands are not met, and therefore he is unable to consent to re-development unless his needs are met. It would follow that if the 2nd Respondent Society and Respondent No.3 – Developer were to fulfill the personal requirements of the Petitioner, he would have no problem, either with the Development Agreement dated 28th October, 2014 or the NOC granted by Respondent No.1 dated 1st November, 2014.

16. We, therefore, find that the present Petition is certainly not a *bonafide* one and ought not to be entertained at the instance of one disgruntled member whose alleged demands are not being satisfied. We cannot permit one member of a society to hold all the others to ransom in such a fashion. We, therefore, have no hesitation in dismissing the Writ Petition.

17. The Writ Petition is accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.)

(V.M. KANADE J.)