

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 480 OF 2015
IN
ARBITRATION PETITION NO. 852 OF 2014

- 1) Ravee B. Botalje
2) Avinash Babar : Appellants
V/s.
1) Shree Krishan Sai Development Corporation
2) The Young Mens' Progressive Co-operative
Housing Society Ltd. : Respondents

WITH

WRIT PETITION NO. 697 OF 2015

- 1) Ravee B. Botalje
2) Avinash Babar : Petitioners
V/s.
1) State of Maharashtra
2) The Secretary, Social Welfare Department
3) The Collector, Mumbai Suburban District
4) The Young Mens' Progressive Co-operative
Housing Society Ltd.
5) Shree Krishan Sai Development Corporation : Respondents

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Ms. Anita Castellino i/b. Mr. D.S. Patil for the appellants.
Ms. Harsha Y. Shah, Asstt. Govt. Pleader for respondent nos.1 to 3.
Mr. Nitesh Bhutekar for respondent no.4.
Mr. M.M. Vashi i/b. Mr. M.P Vashi & Associates for respondent
no.5.
Mr. S.S. Deshpande, Court Receiver, present in Court.

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CORAM: MOHIT S. SHAH, C.J. &
A.K MENON, J.

Date of Reserving)
the Judgment.) : 25 JUNE 2015.

Date of Pronouncing)
the Judgment.) : 10 JULY 2015.

JUDGMENT (Per Chief Justice)

This appeal is directed against the judgment and order dated 8 May 2015 of a learned Single Judge of this Court appointing the Court Receiver of this Court as Receiver of the two flats presently in occupation of the appellants and directing the appellants to hand over possession of the said flats to the developer, subject to the developer paying the amounts payable to the appellants under the Development Agreement through the Court Receiver.

2. The high degree of saline corrosion in Mumbai shortens the life of buildings. Thousands of buildings require either entire reconstruction or extensive repairs which the occupants belonging to low income group or middle class families cannot afford. The only way out is redevelopment with higher FSI provided under the Development Control Regulations for Greater Mumbai, 1991. This requires involvement of a developer to be selected by the co-operative housing society who will develop the building and provide new rehabilitation flats of equal or larger area to

occupants in the old building free of cost and recover his costs and profit from construction of additional flats which the developer can sell on his own. The solution appears to be both simple and a win-win situation for the occupants as well as the developer.

3. But the facts of this case, as several other cases in this Court, explain why many of the old or dilapidated buildings in the city of Mumbai continue to be in the same condition. A co-operative housing society and an overwhelming majority of members of the co-operative housing society agreeing for redevelopment and vacating their flats for that purpose, are held to ransom because a small minority of members do not allow the redevelopment process to commence. Under a typical redevelopment agreement, all the members of the co-operative housing society are to get, on ownership basis, flats in the new building, which many a time are larger than their respective flats in the old building and are also to get rent for the period during which the new building is to be constructed. However, either to extract additional benefits/amounts or for extraneous consideration, at the instance of a rival developer, the members in minority litigate and continue to litigate for several years, if not decades, stalling the redevelopment project and causing unbearable and irreparable hardship to the majority members and the developer.

4. In one case after another, this Court has been passing orders directing such recalcitrant members to act according to the resolutions of the co-operative housing society passed either unanimously or with majority of 70% of the members. Such recalcitrant members, however, know that even after holding a large number of members of the co-operative society and the developer to ransom for years, if not decades, they have nothing to lose because they will still be getting flats in the new building with the same area, amenities and facilities which the other members are going to get under the Development Agreement. Hence, whatever additional benefits/amounts, if any, they may succeed in extracting from the developer would only be a bonus and there will be nothing to lose, if they ultimately lose in the litigation.

5. In the present case also, the co-operative society of 20 members unanimously passed resolutions in 2009 and 2010 resolving to go for redevelopment as the building had developed cracks in the slabs, beams and columns and the structure was deteriorating. A Development Agreement was entered into between the co-operative housing society and the developer on 21 September 2010 which provides that each member will get a self-contained flat admeasuring usable 575 sq. ft. carpet area in the new building (as against the flat admeasuring 387 sq. ft. in the old building), rent for the period of construction of the new building at Rs.28,000/- per month and Corpus Fund of Rs.7 lakhs as compensation for loss of his fixtures, fittings, etc. in the old building due to demolition and to meet additional burden of

property tax and increased maintenance after construction of the new building, apart from the developer executing a Bank Guarantee of a Nationalized Bank in favour of the co-operative housing society for Rs.1.25 crores. 18 out of 20 members vacated their flats in November 2013 after the developer obtained building permission from the Municipal Corporation in August 2013 for redevelopment of the society building. Substantial walls of the 18 flats in the old building have been demolished. The developer is paying almost Rs.60 lakhs per annum to the 18 members towards rent for temporary accommodation during the construction of the new building. The developer has by now spent about Rs.2 crores, but the two appellants/petitioners do not hand over the possession of the two flats in their occupation to the developer or to the society and do not thus allow the project of redevelopment to take off at all.

6. The appeal is directed against the judgment and order of the learned Single Judge wherein finding is given that the two appellants are blackmailing the developer to extract the maximum possible benefits from them and their conduct completely lacks *bona fides* and smacks of *mala fides*. In para 2.23 of the judgment (internal page 13), the learned Single Judge has reproduced the photocopy of the handwritten paper on which the two appellants had made their exorbitant demands from the developer to get a larger flat area and exorbitant amount (in the handwriting of appellant no.1 herein). Refusal by the developer to meet those demands has resulted into this litigation.

7. The facts leading to filing of the appeal and the writ petition may be broadly stated as under:-

(a) On 28 July 1966, the State Government allotted a plot in Ambivali to Young Men's Progressive Cooperative Housing Society (hereinafter referred to as “**the Society**”) for construction of residential buildings for its members, subject to certain conditions, under what is known as “Post War Reconstruction Scheme no.219 (PWR 219) for backward class families. The Social Welfare Officer issued a certificate dated 4 January 1967 certifying that the members of the Society belonged to Scheduled Castes. The Additional Collector then issued allotment order dated 28 January 1967 in favour of the Society. On 21 June 1972, a corrigendum was issued substituting Plot No.43 with new Plot No.68 admeasuring 1112 sq. yards.

(b) On 4 October 1978, the Society submitted a list of 20 members claiming that the list was approved by the State Government. The Additional Collector verified the list and recorded that the State Government by its G.R. dated 28 July 1966 had approved 18 members, but only 8 out of those approved members were found in the list submitted by the Society and, therefore, the Society had changed 10 members without approval of the Government and in addition to the above, the Society had also enrolled 2 extra members.

On 19 February 1979, the Society informed the Revenue Department that from out of initial 18 members, 8 members either resigned or were expelled from the Society and, therefore, the names of 10 substituted members be approved.

(c) In 1984, the Additional Collector directed the Society to furnish detailed information through the Social Welfare Officer. In 1986, the Social Welfare Officer requested the Collector to allot the plot in favour of the Society and to approve the membership of 9 new members. The Revenue Department informed the Society that the State Government was planning to allot Plot No.9 from out of Survey No. 111D and 141A, Ambivali and directed to submit requisite information of the members to the Collector.

(d) By letter dated 2 June 1986 (Page 121), the Additional Collector informed the Society that Plot No.9 is to be allotted to the Society for residential purpose of approved 17 members under PWR Scheme 219. It was also informed that membership of 17 members is approved and names of remaining 3 members will be approved subsequently.

On 3 July 1986, the Society executed an Agreement agreeing to the terms and conditions fixed by the Government which were as under:-

- (i) *Grant is under PWR Scheme-219.*
- (ii) *Housing of approved members only*
- (iii) *No transfer of flat without prior permission of Collector/Govt. Such permission subject to payment of 50% of sale amount to Government.*
- (iv) *No enrollment of new members without permission.*
- (v) *No additions or alterations without prior permission of Collector.*
- (vi) *Land can be resumed for breach of condition.”*

(e) On 12 September 1986, the Additional Collector issued the order allotting the land admeasuring 936 sq.mtrs. of Plot No.9 out of Survey No.111D, Ambivali to the Society to construct a multi storied building to accommodate its approved members under the Backward Class Cooperative Scheme subject to the aforesaid condition.

(f) After the Society started the construction work, some of the members tendered their resignations. The Society was, therefore, facing financial problems. The Society could not get members from the backward classes. The Society, therefore, accepted some members from the open category, who contributed their share towards the cost of construction of the Society building. Accordingly in the year 1990, the Society building was constructed with 20 flats, each flat with carpet area of about 387 sq. ft.

(g) The Additional Collector issued three show causes notices between 24 November 1994 and 26 December 2008 to the Society to show cause why the land should not be repossessed for breach of the terms and conditions of allotment, particularly allotment of flats to members who were from open category without taking prior permission of the Government/Collector. The Society called for necessary information from the members and it was found that by the year 2008, out of the total 20 members, the Society had 11 members (including the two appellants) belonging to Backward Classes and 9 members belonging to open category.

(h) At the Special General Body Meeting of the Society held on 21 December 2008, both the appellants were present and the issue pertaining to redevelopment of the Society was discussed at the meeting. It seems that the two appellants were not the original members of the Society, but are heirs of the original members. The appellants, who were aware of the fact that names of 11 members out of 20 members of the Society were approved by the Collector, gave their consent dated 15 January 2009 and 6 January 2009 respectively stating that they have no objection for redevelopment of the Society building by demolishing the old structure and constructing the new building as per the Development Control Rules as decided at the Special General Body Meeting of the Society held on 21 December 2008 and that through the said consent letters they were offering full cooperation to the Society.

(i) As per the inspection report dated 1 November 2009 of the Consulting Engineer appointed by the Society, there were major cracks in the slabs, beams and columns of the building indicating failure of the existing structure to withstand or to carry the imposed load and the deterioration was fast; that the structure was in a dangerous condition and risky to human life and therefore the structure was required to be completely demolished and reconstructed.

(j) At the Special General Body Meeting held on 28 March 2010, all the 20 members of the Society (including both the appellants) passed a resolution to appoint respondent no.1 herein as a developer to develop the Society's property.

(k) When the draft Development Agreement was placed for approval at the Annual General Body Meeting of the Society held on 8 August 2010, 14 out of 20 members including appellant no.1 approved the draft Agreement. Appellant no.2 initially stated that the Society should go for redevelopment after getting the names of Society members approved, but, as recorded in the minutes, appellant no.2 as well as other two opposing members later submitted that “they are favouring the resolution on the point that the meeting is arranged with the developer to clear some of their difficulties”. Ultimately the Development Agreement was executed by and between the Society and developer on 21 September 2010, which included the following conditions:-

“i. The Developer agreed and undertook to abide by the terms and conditions of allotment of the land to the said Society and to obtain permission, NOC, sanction from the Government for development of the land by demolishing the old building and constructing a new building in its place.

ii. The Developer agreed to pay Rs.3,36,000/- to each Member in advance, for alternate accommodation for 11 months at the rate of Rs.28,000/- per month vide postdated cheques and also agreed to pay an amount of Rs.10,000/- to each Member towards transportation for shifting and reshifting, and also one month rental i.e. Rs.28,000/- in advance, for bearing the cost of brokerage for alternate accommodation.

iii. The Developer agreed to pay to every Member Rs.7 Lacs by way of Corpus Fund, as compensation for loss of their fixtures, fittings, etc. in the old building due to demolition and also to meet the additional burden of property tax and increased maintenance after construction of the new building.

iv. The Developer agreed to construct and provide absolute free of cost to the Members of the Society, a self contained flat comprising of two room, hall, kitchen, two toilets cum bathroom, admeasuring usable 575 sq.ft. carpet area.

v. The Developer agreed to complete the construction of the new building within a period of 18 months from the date of receipt of the Commencement Certificate (‘CC’).

vi. The Developer agreed to execute a general Bank Guarantee in favour of the said Society for Rs.1,25,00,000/- from any nationalized bank.”

(emphasis supplied)

(l) The State Government by order dated 31 October 2012 granted conditional permission for redevelopment of the Society building, but directed the Collector to verify the eligibility of existing members of the Society and also subject to condition that the enrollment of new members will be subject to approval of the Collector.

(m) The Collector issued the approval dated 16 May 2013 for redevelopment, inter alia, on condition that the unauthorised transfers shall require approval from the Collector without which the development work shall not commence.

(n) At the meeting of the members of the Society with the director of the developer on 9 June 2013, appellant no.2 stated that the members of the Society will not vacate their premises unless the developer obtains an order allowing the Society to allot its flats in the 80% (open category) : 20% (backward class) ratio, for which the developer had made an application to the Government on 4 December 2012. The other members agreed to vacate their flats. Ultimately minutes were drawn of the said meeting of 9 June 2013 and in the last paragraph of the said minutes, it was recorded as under:-

“All the members present were pleased with the Developer and agreed to vacate their flats by 30th September, 2013 and promised to extend their cooperation to the Developer if and when required for redevelopment of the said building and requested the Developer to get all the permissions to immediately start the work of reconstruction by 30th September, 2013”.

(o) Thereafter the Collector issued the NOC dated 29 July 2013 for redevelopment subject to the condition that it was obligatory for the Society to obtain approval from the Social Welfare Officer with respect to unauthorised transfers before commencement of development.

(p) Thereafter on 26 August 2013, the Municipal Corporation granted building permission (IOD) in favour of the developer for redevelopment of the Society building.

(q) On 23 September 2013, the developer and the Society submitted an application to the Ministry of Revenue & Forests of the State Government seeking permission to admit 80% members from the open category and 20% members from the reserved category.

(r) At the Annual General Body Meeting held on 27 October 2013, the members of the Society agreed to vacate their respective flats in the second fortnight of November 2013. Thereafter 18 members of the Society vacated their flats and the developer started paying monthly compensation to the said 18 members towards temporary alternate accommodation. On 28 December 2013, the Society gave its no objection to the developer to demolish the flats of which possession was handed over by the members. The developer demolished the internal walls of the flats of which possession was handed over to the developer.

(s) In February 2014, the appellants and their family members had a meeting with the developer at Juhu Gymkhana Club where the appellants placed their demands before the developer including rent of Rs.35,000/- per month and all three years rent to be paid in advance, i.e. Rs.11,55,000/- + shifting, corpus fund of Rs.25 lakhs and flats of larger area on top floor of the new building.

(t) On 22 March 2014, appellant no.2 took an amount of Rs.1,00,000/- from the developer and issued a receipt for the same. Appellant no.2 also issued a fresh consent letter/declaration to the developer undertaking to vacate his flat immediately upon receipt of the amounts set out therein.

(u) On 22 August 2014, the Assistant Commissioner, Social Welfare, Mumbai Suburban, issued a NOC for redevelopment subject to the condition that occupation of the members of the Society should be regularised before obtaining the building completion certificate.

(v) On 12 September 2014, the Secretary of the State Government granted NOC to the Society to have 80% members from the open category and 20% members from the reserved category. The State Government while granting NOC for redevelopment subject to various conditions also required respondent no.1 developer to pay Rs.80 lakhs to the Government which amount has been paid by the developer to the Collector.

(w) Pursuant to the above NOC, the Collector by his order dated 19 November 2014 granted permission to the Society to have 80% members from the open category and 20% members from the reserved category.

(x) The appellants filed Writ Petition No.3196 of 2014 challenging the above NOC dated 12 September 2014 of the State Government, but the Collector's order dated 19 November 2014 is not challenged. The appellants have also not handed over two flats in their possession to the Society or to the developer.

8. In view of the aforesaid developments, particularly inability of the contractor to obtain possession of 2 flats from the appellants and consequent delay in demolition of the entire building of the Society, the developer, even after having obtained IOD (building permission), has not been able to obtain commencement certificate from the Municipal Corporation, but the developer is required to pay the compensation to 18 members at the rate of Rs.28,600/- per month per member till completion of the project (as stated in the Developer's affidavit dated 21 February 2015 – page 407).

In view of the above, the developer filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 seeking the resolution of the dispute between the developer and the Society and for damages on account delay in commencement of the work even after issuance of permission granted by the State

Government on 12 September 2014, and building permission granted by the Municipal Corporation in August 2013.

9. After hearing the learned counsel for the parties at length, the learned Single Judge has passed the impugned order dated 8 May 2015 appointing the Court Receiver for taking over possession of the two flats in question from the appellants and thereafter to hand over the said flats to the developer for demolishing the same and to proceed with the re-development work subject to the condition that before accepting the possession from the Receiver, the developer shall deposit with the Court Receiver the amounts payable to the appellants under the Development Agreement, which amounts will be paid over to the appellants. It is this order which is challenged in Appeal (L) No. 480 of 2015.

10. Since Writ Petition no.697 of 2015 challenging the Government Order dated 12 September 2014 is in respect of the same property, which is also subject matter of the appeal, both the appeal as well as the writ petition were heard together and are being disposed of by this common judgment.

11. The Court Receiver has submitted reports with photographs indicating that out of 20 flats in the Society building, the walls of 18 flats have been substantially demolished and only appellant no.2 claims to be in possession of his flat. Appellant no.1 is not occupying the flat.

12. The basic contention of the appellants is that the Society was allotted land for construction of flats for members of backward classes and, therefore, the Society could not have decided to go for redevelopment wherein 80% members would be from the open category and 20% members would be from the reserved category. For the same reason, the appellants have challenged the Government Order dated 12 September 2014 permitting the Society to have 80% members from the open category.

13. The respondents have opposed the appeal as well as the writ petition. While dealing with the contentions of the appellants/writ petitioners, great emphasis has been placed by them on the findings given by the learned Single Judge in the impugned judgment to the following effect:-

*“This Court has no hesitation in recording that from the aforesaid conduct of Respondent Nos.2 and 3 (**the appellants herein**) this Court is satisfied beyond any doubt that the Respondent Nos.2 and 3 (**the appellants herein**) have taken different stands at different times only to blackmail the Developer and extract the maximum possible benefits from him. When the Respondent Nos.2 and 3 (**the appellants herein**) failed to make the Petitioner (**developer**) succumb to their demands, the permission which they had insisted upon is challenged by them, by pretending to be the messiah of the backward class. The conduct of the Respondent Nos. 2 and 3 (**the appellants herein**) therefore completely lacks bonafides and smacks of malafides.”*

(emphasis supplied)

14. Learned counsel for the developer as well as the Society have also submitted that the appellants/writ petitioners, having acquiesced in the decision of the Society to go for redevelopment are estopped from raising any contention which would have the effect of setting at naught the decisions/resolutions of the society passed either unanimously or by 70% of members.

15. Learned counsel for the Society and the developer have also contended that the appellants, who are only 2 out of 20 members of the Society, have no right to raise any challenge to the decision or resolution of the Society as the members are bound by the decision or resolution of the Society, particularly when 90% of the members of the Society have taken the decision, to which the appellants initially agreed and are subsequently trying to resile from their obligation.

16. It is submitted that the developer has already paid Rs.80 lakhs to the Collector for obtaining the NOC for redevelopment, walls of 18 flats have been substantially demolished and the developer has been paying rent at the rate of Rs.26,800/- per month per member to all the 18 members, i.e. an amount of about Rs.60 lakhs per annum for the last almost 2 years and is required to continue to pay such rent till completion of the project which has remained grounded on account of negative and destructive attitude of the appellants who have been trying to blackmail the developer. It is submitted that at the time of

execution of the Development Agreement, the Society and the developer had agreed that each member would get flat admeasuring 575 sq.ft. carpet area as against 387 sq.ft. of the area presently in occupation of each of the appellants in the existing building, and the members of the Society had agreed to accept the same. None of the other members have made any demand for additional area. The developer has given a written undertaking to the Court that he has not used and will not use the fungible FSI available for the rehab building for the free sale area.

17. Having considered the rival submissions, we find considerable substance in the submissions made on behalf of respondent no.4 Society that a member of the cooperative society cannot assert a right in respect of a flat occupied by him independent of the rights of the cooperative society. In **Sarthak Developers vs. Bank of India Amrut Tara Staff Cooperative Housing Society Limited**¹, this Court has held as under:

“14. A member of a cooperative society cannot assert a right in respect of a flat occupied by him independent of the rights of the cooperative society. Each of the dissenting members continues to be a member of the cooperative society and continues to be bound by the agreement that was entered into by the society with the developer. Under Section 9 of the Arbitration and Conciliation Act, 1996, a party to an arbitration agreement is entitled to apply to a Court for an interim measure of protection including for appointment of a receiver. The property in respect of which a Receiver is sought to be appointed may well be in possession of a

¹ Appeal (L) No. 310 of 2012 decided on 5 December 2012

third party. The crucial test for the application under Section 9 is whether the party moving the application under section 9 is a party to the arbitration agreement and whether the appointment of a receiver is sought in respect of property which forms the subject matter of arbitration agreement. In the present case, the dissenting Respondent are subsumed within the identity of a cooperative society of which they are members. Each one of them is bound by the agreement which was entered into by the Cooperative Society of which they are members, with the Appellant. The First Respondent society has supported the redevelopment through the Appellant. In these circumstances, a Petition under Section 9 would be maintainable”.

18. It is also necessary to note that the above principle is required to be applied with much greater vigour in a city like Mumbai. In the aforesaid judgment, in paragraph 17 the Court held as under:-

“17. The appointment of a Receiver is undoubtedly a drastic order, but the Court is empowered to do so on well established principles of it being just and convenient. There are several reasons which must weigh in favour of the appointment of a receiver. Firstly, the condition of the property in question is a matter of importance in the city of Mumbai which is affected by high degree of saline corrosion. The buildings are admittedly dilapidated and in urgent need of repair or redevelopment. The Society was not in a position to carry out repairs *having regard to the fact that in August, 2007 the cost of repair was estimated at Rs. 1.65 crore by its structural consultant. Hence, the option of redevelopment which has been accepted in the resolution passed by the Society would have to be respected.* Secondly, in the present case, an overwhelmingly large proportion of the members of the Society have consented to the scheme of redevelopment and have in fact vacated their

premises. *The interests of those 149 members who are supporting redevelopment and of whom 143 have vacated are of paramount concern. Thirdly, unless a receiver was to be appointed, it will be open to a dissenting minority of a few members to obstruct and defeat the will of the large majority. Fourthly, each of the dissenting members is also, like all the members of the Society, entitled to permanent alternate accommodation free of cost in the redeveloped building. An enhancement of the existing areas in occupation is envisaged in the redeveloped building. In the meantime, each of the members shall be entitled to compensation for transit accommodation as agreed with the Cooperative Society and as paid to all other members. This is not a case where a scheme of redevelopment is oppressive to the legitimate interests of a minority nor has any such submission been urged.*"
(emphasis supplied)

19. Before proceeding further, we may note the submission of the learned counsel for the appellants / writ petitioners which has also been recorded in para 26 of the impugned order of the learned Single Judge, which reads as under:-

"26. Since Mr. Kanade the learned Advocate appearing for the Respondent Nos.2 and 3 (**the appellants herein**) submitted before this Court that the Respondent Nos.2 and 3 (**the appellants herein**) are not wanting to come in the way of the redevelopment but are only scared that they may loose their shelter, if the State Government reposesses (sic) the said plot of land allotted to the Society, this Court enquired from Mr. Kanade whether Respondent Nos.2 and 3 (**the appellants herein**) would agree to vacate their flats, if the Court obtains an undertaking from the Petitioner that in the event of Respondent Nos. 2 and 3 (**the appellants herein**) not getting possession of their respective flats within a period of 36 months from the date of commencement of construction for any reason whatsoever, the Petitioner (**the developer**) shall provide

ownership flats admeasuring 575 sq.ft. to Respondent Nos. 2 and 3 (**appellants herein**) in the same vicinity. Respondent Nos. 2 and 3 (**the appellants herein**) who were present in Court, agreed to handover possession of their flats to the Petitioner (**developer**) upon the Petitioner (**the developer**) giving such an undertaking. The Petitioner (**developer**) too agreed to give such an undertaking. The matter was therefore, adjourned only to enable the Parties to file the Minutes of Order. However, on the next date of hearing, Respondent Nos. 2 and 3 (**the appellants herein**) for reasons best known to them went back on the agreement arrived at in Court (which was not a without prejudice agreement) and prayed that the Court should decide the matter on merits.

27. The conduct of Respondent Nos. 2 and 3 (**the appellants herein**) has caused and is causing grave prejudice to the Petitioner (**developer**) who has till date spent more than Rupees Two crores towards the redevelopment project, and to the other tenants of the building who have vacated their flats in November 2013 and are waiting patiently to get possession of the newly constructed flats. The structure which was admittedly weak has become weaker since the internal walls of most of the flats are broken. Respondent No.3 (**the appellant no.2 herein**) has already vacated his flat. The entire redevelopment project is stalled because Respondent Nos. 2 and 3 (**the appellants herein**) are refusing to give possession of their flats. The balance of convenience is completely in favour of the Petitioner (**developer**) and the members of the Society and against Respondent Nos. 2 and 3 (**the appellants herein**).”

20. We are in respectful agreement with the above observations of the learned Single Judge that the appellants having initially agreed to participate in the redevelopment project entrusted by the Society to the developer, the appellants are now

estopped from raising the contentions which are inconsistent with or which would be destructive of the resolutions of the Co-operative Housing Society, particularly when 18 out of 20 members have already vacated their flats and substantive portions of internal walls of their flats have been demolished and the developer has already spent Rs.2 crores and continues to spend Rs.60 lakhs towards payment of rent to 18 members of the Society. It would not now be possible to restore *status quo ante*.

21. The petitioners in the writ petition have voiced an apprehension that the State Government and the Collector have granted NOC for redevelopment subject to regularisation of membership of some members who had obtained membership without permission of the Government/Collector and that if the State Government or the Collector do not grant such approval and the State Government repossesses the plot of land allotted to the Society, the appellants will lose their flats. Learned counsel for the developer has submitted that the developer is ready to give an undertaking that within a period of 6 months of the appellants handing over their flats to the developer, the developer will provide to each of the appellants a newly constructed flat admeasuring 575 sq.ft. carpet area on ownership basis in another building in the same locality so that there will never be even 1% risk to the appellants in future.

22. We are, therefore, of the view that the interests of the appellants/writ petitioners are more than sufficiently protected as the developer is ready to give such an undertaking.

23. Coming to the challenge to the Government order dated 12 September 2014, by the said order, the Society has been permitted to take members from open category, subject to *inter alia* the following conditions:

“(1) It is compulsory to have 20% of the total old members and the additional new members to be from the backward class.

(2) The eligibility of the additional members, accommodated through the redevelopment/TDR, to be inspected by the District Collector and the government approval to be taken for such additional members.

(3) All terms & conditions felt necessary by the District Collector.”

24. Acting on the basis of the above Government order, the Collector has issued the order dated 19 November 2014 permitting the society to have 80% members from the open category and 20% members from the reserved category. This order of the Collector has, however, not been challenged.

25. We find considerable substance in the submission made on behalf of the respondents that the writ petitioners are, in the first place, estopped from challenging the above Government order dated 12 September 2014 because, apart from giving their consent for redevelopment through the developer at the meeting of

the members of the Society with the director of the developer on 9 June 2013, appellant no.2 had stated that the members of the Society will not vacate their premises unless the developer obtains an order from the Government allowing the Society to allot its flats in the 80% (open category) and 20% (backward class) ratio, for which the developer had made an application to the Government on 4 December 2012.

26. Apart from the above hurdle in the way of the writ petitioners, out of 11 backward class members, 9 backward class members have agreed for redevelopment through the present developer and they have not raised any objection to the Government order dated 12 September 2014, but on the contrary, after the developer made the application to the State Government for permission to have 80:20 ratio on 4 December 2012, all the remaining 18 members, including 9 backward class members, vacated their flats in November 2013. Thirdly, the learned Single Judge has highlighted the facts in paragraph 2.3 of the impugned judgment (which we have indicated in paragraph 7(f) hereinabove) that after the Society had started construction work in the year 1986-87, some of the members tendered their resignation, the society was facing financial problems and the society could not get members from the backward classes. The Society, therefore, accepted some members from the open category who contributed their share for the construction of the society building. Accordingly, the Society building was constructed with 20 flats in the year 1990 and the two appellants-writ petitioners

herein never objected for induction of open category members for more than 20 years. It is too late in the day for the writ petitioners now to contend that the society should have only backward class members. Moreover, the petitioners, two in number, are going to get flats in the new building with much larger area of 575 sq. ft. carpet area each and, therefore, no prejudice is caused to the petitioners. We are, therefore, of the view that the petitioners have no *locus standi* to challenge the Government order dated 12 September 2014, when 9 other backward class members of the co-operative housing society have accepted the Government order dated 12 September 2014 and the Collector's order dated 19 November 2014 (which has not been challenged by the petitioners).

27. As per the settled legal position, the writ jurisdiction of this Court under Article 226 of the Constitution is discretionary. While exercising this jurisdiction, the Court is required to consider not only the merits of the controversy between the parties, but also other relevant factors like conduct of the parties and whether any injustice has been caused to the petitioner/s. Having considered all the relevant facts, we are satisfied that no injustice has been caused to the petitioners and that the petitioners have by their conduct highlighted in the judgment dated 8 May 2015 of the learned Single Judge and as mentioned hereinabove, have disentitled themselves for any relief in the extraordinary, prerogative and discretionary writ jurisdiction of this Court.

28. The application of the Society for regularisation of those members, who were inducted without permission of the Government/Collector, is still pending consideration of the authorities and, therefore, the Government/Collector shall proceed to decide the application of the Society for regularisation of those members in the light of the Government order dated 12 September 2014 and the Collector's order dated 19 November 2014. This shall be done within one month from the date of receipt of this judgment. We are required to give this direction as 18 out of 20 members of the Society have vacated their flats and are in transit accommodation for which the respondent developer is paying rent to the 18 members since November 2013 to the tune of about Rs.60 lakhs per annum.

29. For the reasons aforesaid, we are of the view that the writ petition filed by the two petitioners challenging the Government order dated 12 September 2014 does not deserve to be entertained.

30. Appeal (L) no.480 of 2015 is dismissed. Subject to the direction in para 28 hereinabove, Writ Petition no.697 of 2015 is also dismissed.

31. We were inclined to saddle the petitioners with costs quantified at Rs.5 lakhs and to permit the developer to deduct Rs.2.5 lakhs from the amount payable to each petitioner under the Development Agreement dated 21 September 2010. However,

when the judgment is being pronounced, learned counsel for the petitioners under instructions of both the petitioners, who are present in Court, undertakes and states that both the petitioners will hand over peaceful and vacant possession of the two flats in possession of the respective petitioners to the Court Receiver within one week from today in compliance with the directions given by the learned Single Judge in the judgment dated 8 May 2015.

Learned counsel for the petitioners, under instructions of both the petitioners, further states that the petitioners are ready and willing to take the permanent rehab tenements in the Society's building to be redeveloped and do not want the developer to give an undertaking to give some other flats in the same locality.

32. In view of the above undertaking, which we accept, we do not pass any order for costs, but make it clear that in case the petitioners do not comply with the above undertaking within one week from today, the developer will be entitled to deduct Rs.2.5 lakhs from the amount payable to each petitioner under the Development Agreement dated 21 September 2010.

33. Accordingly the Court Receiver shall take over possession of the two flats in question from the petitioners on 17 July 2015 at 3.00 p.m.

34. After the petitioners hand over possession of flats to the Court Receiver and the developer deposits the amount payable to the petitioners as per the Development Agreement dated 21 September 2010, the Court Receiver shall then carry out the directions given by the learned Single Judge in the judgment dated 8 May 2015.

CHIEF JUSTICE

(A.K. MENON, J.)