

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2490 OF 2014

Tardeo Vishal Cooperative Housing Society Limited and Ors.	}	Petitioners
versus		
The Maharashtra Housing and Area Development Authority and Anr.	}	Respondents

**WITH
CHAMBER SUMMONS NO. 75 OF 2015
IN
WRIT PETITION NO. 2490 OF 2014**

Mrs. Vimal Janak Ganjawalla and Ors.	}	Applicants
In the matter between		
Tardeo Vishal Cooperative Housing Society Limited and Ors.	}	Petitioners
versus		
The Maharashtra Housing and Area Development Authority and Anr.	}	Respondents

Mr. Sanjay V. Kadam with Ms. Apeksha Sharma and Mr. S. S. Kadam i/b. M/s. Kadam and Company for the Petitioner.

Ms. Aparna Murlidharan with Mr. P. G. Lad for the Respondents.

Mr. Vikhil Dhoka with Ms. Jinaf Shah i/b. M/s. Solicis Lex for the Applicant in CHSW/75/2015.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- JUNE 10, 2015

P.C. :-

This Writ Petition under Article 226 of the Constitution of India seeks the following reliefs:-

“(a) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, inter alia declaring that MHADA's resolution bearing No. 6636 dated 24th October, 2013 has not applicability in respect of redevelopment proposal of Petitioners' property bearing CTS No. 251 of Tardeo Division situated at Dr.Bhadkamkar Marg, Mumbai 400 008, it being acquired under Section 103-B of the MHADA Act for occupiers' Co-operative society;

(b) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, inter alia declaring that the Petitioners are entitled to redevelop/reconstruct the cessed property owned by them being land bearing CS No. 251 (Part) of Tardeo Division situated at Dr. Bhadkamkar Marg, Mumbai 400 008, under Section 103-I of the MHADA Act as regulated by DCR 33(7) of the Development Control Regulations for Greater Mumbai, 1991, as amended up to date;
.....”

2) At the outset and when this Writ Petition was being argued by the Petitioner, it was brought to our notice that a Chamber Summons being Chamber Summons No. 75 of 2015 has been filed by four Applicants. Their prayer is that they be impleaded as party Respondents to this Writ Petition. The Petitioner be directed to implead them as they are necessary/proper parties.

3) The affidavit in support of this Chamber Summons claims that the four Applicant before us/their predecessors have been co-

owners of a immovable property in the city of Mumbai and particularly described in paras 3 to 5 of the affidavit in support.

4) There was some arrangement between Hindu Undivided Family, based on which, tenants, occupants and these HUF agreed that the tenants/occupants get themselves registered as co-operative housing society and thereafter certain rights would flow in their favour. However, the tenants/occupants have failed to form such society and get it registered. In para 6 of the affidavit, the assertion is that this property and which is subject to the Maharashtra Housing and Area Development Act, 1976, was acquired and the acquisition proceedings and the challenge thereto by way of a Writ Petition in this Court concluded. However, the property owners' association, of which these Applicants are members and the original Writ Petitioners, have approached the Hon'ble Supreme Court of India. The constitutional validity and legality of Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 is challenged and the matter is pending before 9 Judge Bench of the Hon'ble Supreme Court of India. The property therefore could not have been dealt with and during the pendency of these proceedings. It is fairly stated that the Applicants tried to implead themselves as parties in pending Supreme Court proceedings but have not succeeded. In the meanwhile, they have

learnt that though they have not conveyed their right, title and interest in the immovable property in favour of the Petitioner No. 1 but there is a sale deed between Respondent No. 1 and the Petitioner to this Petition, which is being relied upon and to claim certain rights in the property. However, that sale deed is contingent and conditional upon the right of the Applicants/original owners of this immovable property. Apprehending that the Petitioners and Respondent No. 1 MHADA may join together in defeating their rights that the Applicants seek their intervention.

5) We have heard both sides on this Chamber Summons and it would be convenient to deal with it before the Writ Petition is disposed of.

6) We have found from a reading of the sale deed, copy of which is annexed to the Writ Petition and to which our attention is invited by the Applicants' Advocate, that it specifically refers to the pendency of the Supreme Court proceedings. Subject thereto, the right, title and interest in the immovable property is conveyed to Petitioner No. 1 by Respondent No. 1. That is upon acquisition and vesting of the property in Respondent No. 1. Once there is such clarity in the covenant and recital of the sale deed, we do not see any reason to entertain the Application/Chamber Summons. Once we are not dealing

with any civil or private right, then, joining the Applicants as party Respondents is unnecessary. However, while clarifying that any order passed in the Writ Petition shall not affect their right, title and interest, if any, and the legal remedy, we dispose of the Chamber Summons.

7) Now turning to the Writ Petition, we find that the reliance placed by the Petitioner on the sale deed is appropriate. The Resolution relied upon by the MHADA is at page 74A-75 of the paper book. There, Respondent No. 1 has resolved that excluding the schemes in which there is interim order passed by the Hon'ble Supreme Court, in all other cases as mentioned in Annexure 'A' to 'E' in the submitted matter note, the authority is granting sanction that such redevelopment scheme under Development Control Regulation 33(5), 33(7) and 33(9), under which there will be maximum benefit to MHADA, shall be implemented. However, while granting the same, MHADA would ensure optimum benefit for itself. The Resolution clarifies that the decision of the MHADA would also apply to the properties acquired by MHADA. The MHADA will consider as to which of the regulations, namely, 33(5), 33(7) and 33(9) of the Development Control Regulation, Greater Mumbai, 1991 grant maximum benefit to MHADA and based on the same, it would take a decision in individual cases.

8) The reliance placed on this Resolution, to our mind, does not prevent MHADA from taking a decision on the Petitioner's proposals and which are stated to be pending. Neither the pending proceedings before the Hon'ble Supreme Court nor any of the objections which have been raised by the Applicants would prevent the Respondent No. 1 from considering the proposals forwarded by the Petitioners in relation to the subject immovable property. All that we direct is that the Respondent No. 1 should consider these proposals on their own merits and in accordance with law in the light of the clauses in the sale deed and subject to the rights of the original owners if any in the immovable property. The MHADA shall take a decision as expeditiously as possible on these proposals and communicate the same to the Petitioners. In the event the Petitioners' proposals have not been accepted or returned, the Petitioners shall forward the fresh proposal and if such fresh proposal is forwarded, the same be dealt with in terms afore directed and as expeditiously as possible.

9) With the aforestated directions, the Writ Petition is disposed of.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)