

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

**WRIT PETITION NO. 279 OF 2014
WITH
NOTICE OF MOTION NO. 504 OF 2015**

Twin Tower Co-operative Housing Society	}	Petitioner
versus		
Slum Rehabilitation Authority and Ors.	}	Respondents

Ms. Sumedha Rao for the Petitioner.

Mr. Jagdish G. Reddy (Aradwad) for
Respondent Nos. 1 and 2.

Mr. J. S. Saluja-AGP for Respondent No. 3.

Mr. M. U. Pandey i/b. Mr. Rakesh M. Pandey
for Respondent Nos. 5 and 6.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- AUGUST 21, 2015

P.C. :-

By this Writ Petition under Article 226 of the Constitution of India, the Petitioners are seeking a direction to call for the records and proceedings in relation to a order passed by the High Power Committee and also to quash and set aside a Letter of Intent (LOI) dated 6th November, 2013 issued in favour of Respondent Nos. 5 and 6 by Respondent Nos. 1 and 2.

2) It is the case of the Petitioner that it is a Co-operative Housing Society registered under the Maharashtra Co-operative Housing Societies Act, 1960. The first and second Respondents are empowered to sanction and implement rehabilitation schemes. The fourth Respondent is the Municipal Corporation of Greater Mumbai (MCGM), whose duties and obligations are to sanction and supervise construction activities in Mumbai city. The fifth and sixth Respondents are Builders and Developers, who have constructed a building and which is now handed over to the Petitioner Society.

3) The grievance of the Petitioner Society essentially is that they do not have a occupation certificate and that the efforts have not been made to obtain the same by the Builders and Developers from the municipal authorities.

4) It is stated that the LOI was issued in favour of Respondent Nos. 5 and 6 and that LOI is dated 16th October, 2010. According to the Petitioner, following the proceedings and the orders therein and particularly before the National Consumer Disputes Redressal Commission, this LOI could not have been issued and which enables the Builders and Developers to develop the property, on which the Petitioner Society's building is presently standing. Therefore, the imbalance in the Floor Space Index (FSI) computation would arise.

That would mean that the occupation certificate will never be issued enabling the Petitioner to occupy the building and the flats. In the absence of all this, the Petitioner, who is in possession of the flats and tenements in the building is likely to be affected and adversely. That is how an earlier Writ Petition was filed, but the matter was made over to the High Power Committee. The grievance is that all that the High Power Committee has done is to direct the Slum Rehabilitation Authority (SRA) to take steps and ensure that the imbalance in the FSI is cured. The direction in para 5 of the order of SRA and impugned in the Writ Petition is brought to our notice.

5) Still the grievance remains, according to the Petitioner, because of subsequent developments and that a communication at page 101 of the paper book (Exhibit-'P') by the SRA to the Executive Engineer (Building Proposal) of the Municipal Corporation. Therein, it is stated that the status of the development of the building proposal of CTS Nos. 387, 389, 389/1, 390, 394, 395, 395/1 to 25, 399 and 399/1 of village Mogra, Andheri (East) and the office files of building proposal department (W/S) along with the documents for building No. ABC, which is the subject building and of the Society excluding the completed buildings, be given to the Department (SRA) to amalgamate the development of these plots with the adjoining approved SRA scheme

under regulation 33(10) and 33(14) D of Appendix IV of D.C. Regulation 1991. The Municipal Corporation, in compliance with this letter, has forwarded the details of approval in the layout. The communication and the act of the SRA in calling for these details and thereafter issuing a communication dated 12th November, 2013 to the same Executive Engineer would, according to the Petitioner, demonstrate as to how the request for occupation certificate of existing building No. ABC, approved by the Building Proposal Department of MCGM was agitated in the High Court and the High Court directed the Municipal Corporation to grant personal hearing and pass appropriate orders. The MCGM, by order dated 17th November, 2004, stated that grant of occupation certificate could be considered only on purchase of requisite Transferable Development Rights (TDR) and removal of imbalance of FSI on the plot. Still, the SRA feels that it has complied with the direction of the High Power Committee and by calling upon the Builders and Developers to submit a proposal to remove this imbalance of FSI. However, all this does not ensure that the occupation certificate would be obtained and in favour of the Petitioner Society, expeditiously.

6) It is only such anxiety and the communication which has been referred by us ending with the letter dated 26th November, 2013 that we called upon Mr. Pandey appearing for Respondent Nos. 5 and 6

to inform us as to how the Petitioner Society would be assisted in obtaining the occupation certificate and that obligation undertaken by the Respondent Nos. 5 and 6 would be duly discharged.

7) Mr. Pandey has invited our attention to the affidavit of Mr.A.P.Kamdar, the partner of Respondent No. 5 as also the Respondent No. 6 and particularly the statement therein that all steps would be taken to remove this imbalance. However, he submits that we must take note of the statements in paras 10 and 11 at running page 111. Mr. Pandey submits that with all this background and as pointed out, the fifth Respondent will not run away from any obligation or responsibility. He invited our attention to clause (1) of LOI and clause 14 of the annexure 'A' to the LOI, namely, "that you shall remove the imbalance of FSI in respect of existing building ABC by loading transferable development rights (TDR) therein and obtain OCC and convey the same to the Society of existing building ABC before applying for approval to the last sale building plans of equivalent BUA". All allegations to the contrary are denied and once again the statements have been reiterated that they would do nothing contrary to the order passed by the High Power Committee and the terms and conditions of the LOI.

8) The Petitioner's Counsel, however, would insist that after waiting for all these years, the occupation certificate has not been given and for no fault of the Society. She would submit that this Court at least must ensure that the occupation certificate is obtained within a specific time frame and schedule.

9) We inquired from Mr. Pandey as to whether it is possible for Respondent Nos. 5 and 6 to give any undertaking to this Court and with regard to compliance with the above obligation. We also inquired from Mr. Reddy appearing for the SRA as to what the SRA would do to ensure that the Builder obtain the occupation certificate.

10) After taking instructions from duly authorised representative of the Builders and Developers present in Court, Mr. Pandey states that Respondent Nos. 5 and 6 would complete the construction of the rehabilitation buildings as expeditiously as possible and within a period of three years from today. Mr. Pandey submits that the imbalance in the FSI would be corrected as soon as this construction of rehab buildings is complete. The Petitioner's anxiety would be taken care of and by loading the TDR on the property. That would remove the imbalance and thereafter the Petitioner's construction or the building occupied by the Society can be regularised. Thus, the imbalance in the FSI and as a result of which the occupation certificate is withheld will

be corrected and which is a defect that would be cured completely as soon as the construction of these rehab buildings is complete.

11) We accept each of these statements made by Mr. Pandey and on instructions as undertakings of the Builders and Developers given to this Court. We are of the view that this Court has repeatedly taken care to protect the interest of the Petitioner Society. Merely because the Petitioner goes on filing the Writ Petitions and Contempt Petition, complaints before the National Consumer Disputes Redressal Commission does not mean that the Court must repeatedly issue the same directions at its instance. We are of the opinion that all the authorities and in charge of regulating and supervising the construction activity at site have taken adequate care and precaution so as to protect the rights of the Petitioner. They have ensured that the Petitioner obtains the occupation certificate and the Builders and Developers, who are developing the property, fulfill their obligation in accordance with law.

12) In such circumstances and all the more when the undertakings have been given today and which we have accepted, nothing survives in the Writ Petition. It is accordingly disposed of. In the light of the disposal of the Writ Petition, the Notice of Motion does not survive and the same to stand disposed of as such.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)