

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2893 OF 2012
WITH
CHAMBER SUMMONS NO. 72 OF 2013
WITH
NOTICE OF MOTION NO. 248 OF 2013
WITH
CHAMBER SUMMONS NO. 131 OF 2013

Shabbir E. Zaveri & ors. ... Petitioners.
Versus
The Mumbai Building Repairs and
Reconstruction Board & ors. ... Respondents.

Mr. Ankit Lohia i/b. Mr. Tushar Goradia, advocate for petitioners.

Mr. P.G. Lad, advocate for respondent Nos. 1 and 2.

Mr. Chetan Kapadia i/b. M/s. Kishore Thakerdas & Co. advocate for
respondent No. 3.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ
DATE : MARCH 18, 2015

P.C.:

1 Rule. Rule made returnable forthwith and heard by consent of
the parties.

2 The Petitioners who are the original tenants of one Hirjibhoy Pestonji Soonawalla Family Trust, have approached this Court being aggrieved by Condition No. 24 of N.O.C. Dated 4th September, 2009 issued by respondent Nos. 1 and 2.

3 The respondent No. 3 had purchased the said property from the original trustees. The respondent No. 3 had entered into development agreement with the original trust. Prior to entering into the said transaction, a public notice was caused to be published in the local newspapers. Subsequently, conveyance was executed by the Trust in favour of the respondent No. 3 on 5/12/2008.

4 The respondent No. 3 thereafter negotiated with the tenants for redevelopment. After obtaining consent of 70 percent of the tenants, an application was made by the respondent No. 3 to respondent No. 1 for issuance of NOC for redevelopment agreement. Prior to entering into agreement with the tenants, a public notice was also published in the newspapers, thereby inviting objections. Since no objections

were received, the NOC was received on 4/9/2009. Subsequent thereto, the respondent No. 3 obtained sanction of the building plans and IOD was issued by the Bombay Municipal Corporation. Since the scheme was to go for redevelopment, the respondent No. 3 entered into agreement for permanent alternate accommodation with the tenants including the petitioners. However, since the building was in extremely dilapidated condition, under the directions of Respondent Nos. 1 and 2 tenants were required to vacate the premises and the building was required to be demolished. However, after the part of the building was demolished, the demolition was stopped. On Petitioner's enquiry with the respondent Nos. 1 and 2, it was informed that the demolition was stopped on account of non-compliance of condition No. 24. The Petitioners thereafter, made various representations. However, since the Petitioners failed to get any response from the Authorities, the Petitioners have to knock the door of this Court.

5 Shri Lohia, learned Counsel appearing on behalf of the
Petitioners states that there is no justifiable reason for insisting upon
the condition as is imposed by condition No. 24 in N.O.C. He
submits that for no fault of the Petitioners, the petitioners are
required to reside in temporary accommodation and are deprived of
their rights to shift to a permanent accommodation, which is required
to be provided by the respondent No. 3.

6 Shri Kapadia, learned Counsel for the respondent No. 3 submits
that on account of various complaints made by respondent No. 4, the
respondent No. 3 though has made various attempts to get property
card, the respondent No. 3 has not been in a position to do so. The
learned Counsel submits that vide order dated 18/9/2014 passed in
Writ Petition No. 151 of 2014, this Court had directed the Collector
to decide the application of the respondent No. 3 for entering name in
the property card within 6 months from the date of that order.
However, no order is passed in the said proceedings. He submits that
as a matter of fact, for no fault of respondent No. 3, he is required to

pay the rent of the accommodations of the tenants, which is provided to the tenants as transit accommodation. He submits that on the other hand, the respondent No. 3 is not in a position to develop the property.

7 Shri Lad appearing on behalf of the respondent Nos. 1 and 2 on the contrary submits that the said condition is imposed so as to protect the interest of the tenants, so that after the redevelopment is completed, rights can be conveyed in favour of the tenants and also in favour of MHADA to the additional area to which MHADA is entitled to as per the scheme. He therefore, submits that since condition is imposed so as to protect the interest of the tenants, an interference would not be warranted for quashing the said condition.

8 The facts in the present case are peculiar. Though the respondent No. 4 has been duly served with the notice of final disposal, he has chosen not to remain present at the stage of hearing of the Petition. Perusal of the additional affidavit dated 6/6/2014

filed by Sanjay P. Bafna a partner of respondent No. 3 would reveal that the said respondent No. 4 had approached this Court by way of Notice of Motion No. 3433 of 2011 in Suit No. 1245 seeking an order of restraint against the present respondent No. 3 from transferring, creating any third party rights in, or parting with possession of, the suit properties and for other reliefs. The learned Single Judge of this Court (Coram : S.C. Gupte, J) vide an elaborate order dated 30th April, 2014 has dismissed the said Notice of Motion. It is relevant to refer to paragraph 12 of the said order which reads thus :

“12 Defendant Nos. 4 to 10, who are transferees of the suit property, have duly caused notices to be published in local newspapers before entering into the suit transactions. There was no claim to the suit property in response to such public notices. The examination of title documents of the transferrors Defendant Nos. 1 and 2 – does not prima facie indicate any doubt as to the title to the suit property. Defendant Nos. 4 to 10 have accordingly entered into the Agreements for Development and conveyance deeds in respect of the suit property. Defendant Nos. 4 to 10 clearly have a prima facie case to protect their rights as bona fide purchasers for value without notice of any defect in the title of their vendors.”

9 It could thus be seen that the learned Single Judge of this Court has prima facie held that the defendant Nos. 4 to 10 in the said suit have made out a prima facie case to protect their rights as bona fide purchaser for value, from the trust. Not only this, but the agreement which has been entered into by the respondent No. 3 with the tenants of the building is also after a public notice was issued in the local newspapers. Though this Court has found that the respondent No. 3 has a good prima facie case and entitled for development of the said property and though tenants including petitioners have entered into a valid agreement of redevelopment with the respondent No. 3, on account of complaints made by respondent No. 4, the entire development of the project has been stalled. Apart from causing irreparable loss to the respondent No. 3, tenants are being deprived of their rights of shifting to permanent accommodation and are required to continue in transit accommodation for years together.

10 Condition No. 24 reads thus :

“24. NOC holder shall update the Property Register Card in his name and submit copy of the same before demolition of the building and commencement of work.”

As submitted by Shri Lad, the only purpose of imposing such a condition is to protect rights of the tenants and of MHADA and to ensure that after completion of redevelopment scheme, conveyance is executed in favour of the tenants as well as MHADA for additional area to which MHADA is entitled.

11 We find that the learned Single Judge of this Court has found that the respondent No. 4 has not made out any prima facie case and respondent No. 3 has made out a case to protect their rights. On account of hyper technical objections, the project need not be stalled. For no reasons, the tenants including the petitioners are being deprived of their rights of being shifted to their permanent accommodation, for years together. In so far as the interests of the tenants is concerned, we find that the purpose would be served by directing the respondent No. 3 to submit undertaking before this

Court, that after completion of project they will execute conveyance and hand over possession of the premises to the tenants, to which the tenants are entitled and also hand over possession of the premises to respondent No. 1, if it is entitled as the scheme and also that the respondent No. 3 will execute proper conveyance in favour of the society of the tenants of the building and of the persons who whom MHADA may allot the additional premises if it is entitled as per the scheme. Needless to state that since learned Single Judge of this Court in Writ Petition No. 151 of 2014 has already directed the Collector to consider the application of the respondent No. 3, in case, the Collector passes an order in favour of the respondent No. 3, the property card shall also be placed before MHADA.

12 We further find that apprehension of the MHADA that the respondent No. 3 may not look into the interests of the tenants is totally without basis. The respondent No. 3 would not be in a position to hand over the possession of salable component to the purchasers, unless the possession is handed over to the tenants and

also the persons to whom additional area will be allotted by MHADA, if entitled as per scheme.

13 In the result, the Petition is allowed. The respondent Nos. 1 and 2 are directed to withdraw the stop work order. The respondent No. 3 would be entitled to start the work of demolition and redevelopment, on respondent No. 3 filing an undertaking before this Court, thereby undertaking that upon completion of redevelopment project, the respondent No. 3 shall hand over premises to the tenants to which they are entitled to and also to Respondent MHADA as per their scheme approved by MHADA and that the respondent No. 3 shall execute conveyance in favour of the society of tenants and also the persons to whom additional area will be allotted by MHADA.

14 Needless to state that since the work of redevelopment of the premises to which the tenants including the petitioners are entitled to has been stalled for considerable long period, Municipal Corporation

of Greater Bombay is directed to process sanctioning plans as expeditiously as possible.

15 Rule is made absolute in the above terms. In the facts and circumstances of the case, no order as to costs.

16. In view of disposal of the Writ Petition, nothing survives in the Chamber Summons and Notice of Motions. The same are disposed of accordingly.

(A.S. GADKARI, J)

(B.R.GAVAI,J)