

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6381/2016

Tridhaatu Realty & Infra Pvt. Ltd.

... Petitioner

V/s.

Shri Siddappa Y. Kusugal & Ors.

... Respondents

Mr. Saket Mone a/w. Mr. Bhushan Deshmukh, Mr. Vishesh Kalra, Mr.
Subit Chakrabarti i/b Vidhi Partners for the petitioner
Mr. Sachin P. Shetye for respondent Nos.1 and 2.
Mr. V. Mannadiar with Aditya Dandavate i/b. Mannadiar & Co. for
respondent No.3.

CORAM: K.K. TATED, J.
DATED : JULY 21, 2016

P.C. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India the Petitioner opponent Nos.1 and 2 challenge the order dated 04.02.2016 passed by the Cooperative Court, Mumbai on the point of preliminary issue of jurisdiction and the order dated 21.03.2016 passed by the Maharashtra State Cooperative Appellate Court, Mumbai in Appeal No.17/2016.

2. For the sake of convenience, the parties will be referred to as per their nomenclature in Dispute No.CC/I/90/2015 i.e. the petitioner as opponent No. 2, respondent Nos.1 and 2 as disputants, respondent No.3 as opponent No.1 and respondent No.4 as opponent No.3.

3. In the present proceedings, the opponent No.1 executed redevelopment agreement with opponent No.2 in respect of the property known as School View Laxmi Vani CHS Ltd. The opponent No.2 carried out redevelopment as per the terms and conditions between the parties. When the building was completed in all respects, except occupation certificate, the disputants raised objection about the allotment of flat, to which the disputants filed dispute under section 91 of the Maharashtra Cooperative Societies Act, 1960 (said Act) before the Cooperative Court, Mumbai with following prayers:

“a) The opponents be directed to allot flat in new premises to the members of old building as per their flat situated in old building. It may be floor wise, road facing.

b) Pending the hearing and final disposal of dispute the opponents and their agents, servants, office bearers, etc. be restrained from allotting new flats in the reconstructed building arbitrarily and without consent and knowledge of disputant.

c) Pending final disposal of dispute, none of the members of old building shall take the possession of the new flat in the reconstructed building on any ground or excuse come forward.

d) Ad-interim injunction in term of prayer (b) and (c) be granted.

e)”

4. Disputants also made application below Exhibit-5 under section 95 of the said Act for an order of injunction restraining the opponents from allotment of flats to their members in School View Laxmi Vani CHS Ltd. Application below exhibit 5 was allowed by the Cooperative Court, Mumbai on 11.02.2016.

5. The opponents raised objection about the jurisdiction of the Cooperative Court to decide the dispute as it is filed by the disputant. The Cooperative Court framed preliminary issue about “jurisdiction”. The Trial Court by order dated 04.02.2016 held that the Cooperative Court has jurisdiction to entertain the dispute as it is filed by the disputant.

6. Being aggrieved by the said order, the opponent No.2 developer preferred appeal No.17/2016 before the Maharashtra State Cooperative Appellate Court at Mumbai which was dismissed by order dated 21.03.2016. Hence, the opponent No.2 preferred the Writ Petition.

7. The learned counsel for the petitioner - opponent No.2 submits that both the courts below erred in coming to the conclusion that in view of section 91 of the said Act, the Cooperative Court has jurisdiction to entertain and decide the dispute as it is filed by the disputant. He submits that as per the development agreement, the opponent No.2 carried out construction activities as per the requirement of the opponent No.1. He submits that by filing a dispute under section 91 of the said Act, the disputant is seeking a relief against opponent No.2 only. He submits that it is the duty of the opponent No.1 to make an allotment of reconstructed premises to its member as per the guidelines prescribed in the Government Circular dated 03.01.2009. He submits that both the courts below failed to consider the fact that the allotment is required to be made by opponent No.1 society only. He submits that the dispute filed by the disputant against

the opponent No.2 developer is not maintainable under the said Act in view of the decision of the Apex Court in the matter of ***Margaret Almeida and Ors. Vs. Bombay Catholic CHS Ltd. & Ors. (2012) 5 SCC 642*** and the judgment of this court in the matter of ***Mohinder Kaur Kochar Vs. Mayfair Housing Pvt. Ltd. 2012(6) BCR 194***. He submits that in both these authorities the Apex Court as well as this court specifically held that in the matters of redevelopment agreement the Cooperative Court has no jurisdiction to entertain the dispute between the society and/or its members with the redeveloper. In support of this contention, he relies on paragraph 30, 37 to 39 of the judgment in the matter of Margaret Almeida (supra). He also relies on paragraph 9 to 11 and 14 to 18 of the judgment in the matter of Mohinder Kaur Kochar (supra).

8. The learned counsel for the respondent No.1 submits that these facts were not considered by both the courts below at the time of deciding the preliminary issue about the jurisdiction. He submits that the appellate court, in paragraph 2 of the impugned order dated 21.03.2016 held that the developer is necessary party in the dispute, as he has to draw the lots after completion of construction. He submits that the opponent No.1 already filed their written statement dated 29.09.2015. He submits that in paragraph 12 and 13 of the said written statement, the opponent No.1 society categorically made a statement that they already made allotment of new flats to its members. Paragraph 12 and 13 read thus :

“12. With reference to paragraph 10 of the Dispute, I deny that the society has allegedly deliberately avoided giving intimation to

the disputants of the meetings of the society. In so far as intimation regarding process of development and allotment of new flats, I say that the allotments have been made and communicated to all members including the disputants. The disputants have however chosen to deal directly with the Developer regarding their allotment. I say that in so far as the allegations in respect of opponent No.2, I am advised not to deal with the same as it does not pertain to the society.

13. With reference to paragraph 11 of the dispute, I deny that the allotment of the flats was without following proper procedure under the law. I say that the allotment of the flats have been done in the matter it is done because of the complexity of the size and location of flats. I say that the disputants on account of their prejudice against the society have made allegations as regards the allotment which are false. I say that the very basis of the dispute being false, the dispute deserves to be dismissed, consequently, the disputants are not entitled to any interim relief.”

9. The learned counsel for the opponent No.2 submits that these facts were not considered by the courts below and erred in coming to the conclusion that the Cooperative Court has jurisdiction to entertain the dispute claiming relief against the redeveloper also. Hence, the orders passed by both the courts below are liable to be set aside holding that the Cooperative Court has no jurisdiction to decide the dispute filed by the disputant.

10. On the other hand, the learned counsel for the opponent No.1 society also supports the case of the redeveloper/opponent No.2. He submits that they already filed written statement before the Trial Court stating that the allotment is already done by the society. He further submits that if the redeveloper is made a party under section 91 of the said Act, then Cooperative Court has no jurisdiction. He also relies on

the authorities cited by the advocate for the petitioner opponent No.2. He also submits that the impugned orders passed by both the courts below are liable to be set aside.

11. The learned counsel for the respondent Nos.1 and 2 original disputant vehemently opposed the Writ Petition. He submits that as per the terms and conditions of the Government Circular dated 03.01.2009 it is the duty of developer to make allotment of flats in newly constructed building. He submits that the developer has committed several breaches in the matter. Hence, the disputant made the developer as party in the present dispute. He further submits that as per section 94(3)(a) of the said Act, the Cooperative Court can pass order against third party also. He relies on section 94(3)(a) which reads thus:

“(3)(a) If the Co-operative Court is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute, it may order, that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Co-operative Court shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.”

12. The learned counsel for the disputants submits that these facts were considered by both the courts below and held that the Cooperative Court has jurisdiction to entertain the dispute filed by the disputant. Hence, there is no question of entertaining the present Writ Petition for setting aside the impugned orders. Therefore, the Writ Petition is liable to be dismissed with costs.

13. Heard both parties at length. A short issue involved in the petition is, “Whether the Cooperative Court has jurisdiction to entertain the dispute filed by the respondents/disputants u/s. 91 of the said Act against the opponent No.2?”

14. It is to be noted that, in the present proceedings, the opponent No.2 developer carried out construction activities as per the terms and conditions of redevelopment agreement between the parties i.e. the society and themselves. The allotment of flats to their members to be done by the housing society as per development agreement. The Government Resolution dated 03.01.2009 issued by the State of Maharashtra clearly shows that subject to the terms and conditions between the parties, the allotment shall be made on the basis of lottery system etc. In the present proceedings, the developer has developed the suit property as per the terms and conditions between the parties and thereafter the society has made allotment to their members as stated by them in their written statement particularly para 12 and 13.

15. Bare reading of the judgment of Apex Court in the matter of Margaret Almeida and others (supra) and the Division Bench judgment of this court in the matter of Mohinder Kaur Kochar (supra) shows that the dispute is not maintainable against the developer who is neither member nor interested in the cooperative housing society's business. Section 91 brings within its purview the disputes touching *inter alia* the constitution, management or business of a society. Paragraph 11, 18 and 19 of the judgment in the matter of Mohinder Kaur Kochar (supra) read thus:

“11. Without prejudice to the above submission, it is also submitted that, in any view of the matter, the dispute arising from implementation of the Re-development Agreement cannot be considered as a dispute arising from the business of respondent No. 4-Society. In support of the said contention, strong reliance is placed on the decision of learned Single Judge of this Court dated 7 March, 2011 in *Vardhaman Developers Limited v. Thailambal Co-operative Housing Society Ltd. & Ors.* (Notice of Motion No. 3274 of 2010 in Suit No. 2725 of 2010) as confirmed by the judgment dated 26 April, 2011 of Division Bench of this Court in Appeal No. 277 of 2011.

18. In the present case, as also pointed hereinabove, respondent No. 4-Society was formed in or about year 1965, and, therefore, the re-development work undertaken after 40 years cannot be treated as a part of the business of respondent No. 4-Society. The dispute regarding development of property of a housing society may touch the business of the society broadly in two categories. Firstly in the kind of cases contemplated under the judgment of *C.F.Marconi* (supra), where the object of the society was to engage in the business of real estate, purchase properties and redevelop the purchased properties. Second type of cases where a housing society undertakes activity of initial construction of the building where the members would reside. In the case at hand, admittedly the object of the society is not like the one in the case of *C.F.Marconi* (supra) i.e. the business engaging in real estate. Thus we are not concerned with the first category.

19. When a co-operative housing society initially constructs the buildings for its members, it is not a redevelopment, but the initial development of the property. The initial construction of the property for a co-operative housing society is one of its prime objects. The two activities namely, initial construction of a building and its redevelopment are different activities. By passage of time, as the building becomes older, the Housing Society may take a decision to repair or redevelop the property. Such activity is totally different from initial development of the building. The dispute arising from such redevelopment, which becomes necessary by passage of time, is not "business" of the society. Such activity cannot be considered as 'touching the business' of the society. The dispute involving

members, developers, managing committee in respect of redevelopment of the property which becomes necessary in view of passage of time, is not relatable to the business of the society. The initial development of the co-operative housing society of constructing the building may be business of the society, but the subsequent redevelopment is not.”

16. In the present proceedings the process of redevelopment of the society's property by the developer does not constitute business of the society within the meaning of section 91. The demolition of the existing building and reconstruction of building of the society is not a business of the society. Hence, section 91 is not attracted in the present case.

17. It is to be noted that, the opponent No.1 has in all 35 members, out of which, the disputants i.e. two members are disputing about the allotment made by the society. Though the building is ready in all respect, other 33 members are suffering and not able to occupy their flats because of present dispute.

18. Considering the above mentioned facts that the disputant has made opponent No.2 redeveloper as party in a dispute u/s.91 of the said Act and the judgments referred to hereinabove, I am of the opinion that the orders passed by both the courts below are required to be set aside holding that Cooperative Court has no jurisdiction to entertain the dispute filed by the disputants against opponent No.2.

19. Hence, following order is passed:

a. Order dated 04.02.2016 passed by the Judge, Cooperative Court, Mumbai and order dated 31.03.2016 passed by the Maharashtra State Cooperative Appellate Court, Mumbai in

Appeal No.17/2016 is set aside to the extent of opponent No.2 only.

b. It is held that the Cooperative Court has no jurisdiction u/s. 91 of the said Act to decide the dispute being No.C/I/90/2015 against opponent No.2 i.e. Tridhaatu Realty & Infra Pvt. Ltd.

c. Disputants to carry out appropriate amendment in Dispute No.C/I/90/2015 by deleting the name of opponent No.2 i.e. Tridhaatu Realty & Infra Pvt. Ltd. within eight weeks.

d. If Disputants failed to carry out amendment within eight weeks, opponent No.1 is permitted to carry out amendment in Dispute.

e. Interim relief, if any, passed against petitioner opponent No.2 stands vacated.

f. Dispute No.CC/I/90/2015 to continue against other opponent Nos.1 and 3 on its merits.

g. No order as to costs.

(K.K. TATED, J.)