

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8679 OF 2016

Sadanand C. Manekar and ors. .. Petitioners

vs.

Sachin Cooperative Housing
Society Ltd. and ors. .. Respondents

Mr. Yusuf Khan i/b Mr. Altaf Khan for the Petitioners.

Mr. Rajkumar Mishra a/w. Ms Jyoti Devalekar-Joshte for Respondent
Nos. 1 to 8.

CORAM : M. S. SONAK, J.

DATE : 6 SEPTEMBER 2016.

P.C. :-

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the order dated 29 March 2016 made by the Maharashtra State Cooperative Appellate Court at Mumbai (Appellate Authority) dismissing the petitioners' appeal against the order dated 10 February 2016 made by the Cooperative Court declining to grant ad-interim relief to the petitioners (disputants).

3] Mr. Yusuf Khan, learned counsel for the disputants, submitted that as yet neither any developer has been appointed nor has redevelopment commenced. The property which is the subject matter of dispute ad-measures approximately 24000 sq.meters or

thereabouts. Even the scrutiny report indicates that the property admeasures 19972.94 sq. meters. In these circumstances, the respondent-society has no right to proceed with redevelopment proposal on the basis that the property in question admeasures only 17415 sq. meters. Mr. Khan further submits that the property in question is mortgaged and unless such mortgage is redeemed, there is no question of proceeding with redevelopment proposal.

4] Per contra, Mr. Rajkumar Mishra learned counsel for the respondent-society, submits that the Cooperative Court had only declined ad-interim relief to the petitioners. Such denial has been upheld by the Appellate Authority by furnish of valid and cogent reason. He submits that there is material on record which indicates that conveyance in favour of the society is only in respect of 17415 sq. meters or thereabouts. The petitioners constitute a minuscule minority, who intend to stall redevelopment proposal, which is likely to have support of overwhelming majority. Mr. Mishra submits that in any case, the orders which declined ad-interim relief to the petitioners themselves state that the petitioners are at liberty to raisetheir objections at the stage of selection of the developer and finalise of development agreement. Mr. Mishra submits that as of now, only tenders have been invited and even the selection of the

development is yet to be finalised. Mr. Mishra states that such selection will be finalized at the Annual General Body Meeting/ Special General Body Meeting which scheduled to take place after a month. For all these reasons, Mr. Mishra submits that the very institution of this petition constitutes an abuse and therefore, the petition should be dismissed with exemplary costs in favour of the society.

5] Having heard learned counsel for the parties and perused the material on record, in my judgment, this is not a fit case for interference under Article 227 of the Constitution of India. By order dated 10 February 2016, the Cooperative Court had merely denied ad-interim reliefs to the petitioners. Undeterred, the petitioners appealed to the Appellate Authority, which has, by a fairly detailed order upheld the order dated 10 February 2016. The Appellate Authority has neither erred on principle nor has acted arbitrarily or perversely. There is accordingly, no case made out to interfere with the impugned order.

6] In fact, upon hearing the matter opportunity was afforded to learned counsel for the petitioners to proceed with hearing on the motion for interim relief before the Cooperative Court scheduled to

take place on 22 September 2016, rather than insist upon any adjudication in the present petition. Learned counsel for the petitioners, however, insisted upon and made his submissions in support of plea of ad-interim relief.

7] There is absolutely no merit in the plea for ad-interim relief. The conveyance is in respect of 17415 sq. meters and therefore, if the respondent-society without prejudice, proceeds with redevelopment proposal on the basis of admitted area, there is no reason to stall such development. The issue of mortgage, if any, can always be sorted out and in any case, since the petitioners do not claim to be mortgages, it is doubtful whether they can raise any objections on this score. The record indicates that the society comprises in all about 120 members. At least *prima facie*, only five petitioners wish to oppose the redevelopment and that too, upon grounds which do not at least *prima face*, inspire much confidence. The impugned orders have rightly declined ad interim reliefs to the petitioners, but have reserved the liberty to the petitioners to raise their grievances at the Annual General Body Meeting/Special General Body Meeting, when, the proposal for redevelopment is to be considered and approve its terms finalised. There is accordingly, no case made out to interfere with the impugned order.

8] The petitioners do give an impression that they are bent upon stalling the proposal for redevelopment for reasons best known to them. If the petitioners have any legal grounds to do so, then there can be no objection to the petitioners resorting to remedies as available to them under the law. However, merely on the grounds of pendency of proceedings before various fora, the petitioners cannot put undue spokes at every stage of redevelopment proposal, which, it appears, is presently in a nascent stage. Taking into consideration the circumstances, this Court was inclined to dismiss this petition with exemplary costs. However, relying upon the assurances of Mr. Khan, learned counsel for the petitioners, that the petitioners will raise their grievances in a legal and democratic manner, this Court refrains from imposition of exemplary costs.

9] This petition is therefore, dismissed. For reasons as indicated above, there shall be no order as to costs.

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)