

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 336 OF 2016**

Mehli D Soonawalla & 3 Ors. ...Petitioners
Versus
The Mumbai Repairs & Reconstruction Board & ...Respondents
2 Ors.

Mr. Susheel Mahadeshwar, *a/w Ms. Ranjana Todankar, for the
Petitioners.*
Mr. S. G. Surana, *for the Respondent No. 3.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 15th February 2016

PC:-

1. This Petition under Article 226 of the Constitution of India prays for the following reliefs.

“(a) This Hon'ble Court may be pleased to issue a writ for quashing and setting aside the communication dated 21.01.2016 issued to the Petitioners by the Respondent No. 1 (Exhibit J1 to J4 to the petition);

(b) This Hon'ble Court may be pleased to issue a writ and quash and set aside

the No Objection Certificate granted by the Respondent No. 1 to the amalgamation and re-development of plot bearing C.S. No. 552/10, 554/10 and 555/10 of Dadar Matunga Division, Plot No. 739-742 of Scheme No. 5 at Parsi Colony, Dadar (East), Mumbai - 400 014;"

2. These two prayers and the reliefs based thereon arise in the following factual background. The Petitioners before us claimed to be the tenants/occupants of a building known as K.S. Batliwala standing on plot no. 742 of Dadar-Matunga Division, City Survey No. 552/10, Parsi Colony, Road No. 5, Mumbai 400 014.

3. The 3rd Respondent to this Petition owns three buildings on plot No. 739 to 742 and these three buildings are called as K. S. Batliwala Building, J.B. Patel Building and N.D.F. Cama Building.

4. These are styled as 'A', 'B' and 'C' buildings and the Petitioners state that they are the occupants of building "A", Batliwala building.

5. In paragraph 5 of the Petition, the application made for redevelopment of building "B" by the 3rd Respondent and the details thereof are set out and a board's letter dated 15th April 1994 is referred.

6. In so far as building B” is concerned, prior to the reconstruction thereof, six occupants as set out in paragraph 6 of the Petitioners were the tenants according to the Petitioners.

7. The claim is that this building “B” tenants were 'coerced' to leave, the owners got rid of all others and that is how the building, meant for them post redevelopment, the reconstructed building came to be occupied by not these persons but others. Some sample agreements unconnected to building “A” are relied upon.

8. Thus, the claim of the Petitioners is that Respondent No. 3 did not take consent of 70% of the occupiers. The No Objection Certificate granted by the board in relation to building “B” is thus faulted.

9. The act of Respondent Nos. 1 and 3 in relation to this building “B” forms the factual narration in the Petition and, particularly, till paragraph 11 thereof. Then comes paragraph 12 and it is stated that in July 2007 the 3rd Respondent filed a suit against the Petitioners and other occupants of building “A” relying upon Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 for recovering possession of the premises on the ground that the building is required to be demolished and a new building erected in its place. The suit, namely, R.A.E. Suit No. 859/1396 is pending before the Court of Small Causes at Mumbai. There is an Additional Affidavit of Evidence filed in the suit and the

Respondent No. 3 stated that he is not carrying out the redevelopment under the D.C. Regulation 33(7) and, therefore, question of obtaining consent of 70% tenants or occupants does not arise. The plaint and proceedings in the suit are referred to in this paragraph 12 and with annexures “E” and “F” to the Petition being the annexures of the pending proceedings.

10. The claim in the present Petition is that the 3rd Respondent in order to obviate and avoid compliance with D.C. Regulation 33(7), which would mandate obtaining consent of 70% of the occupants has chosen the route of filing a suit and taking assistance of Section 16(1)(i) of the Maharashtra Rent Control Act, 1999.

11. From paragraphs 13 and 14 what is evident and apparent is nothing but an answer purportedly of the Petitioners and all occupants to the claim of the Respondent No. 3 in the suit.

12. In paragraph 15 the Petitioners refer to a letter of the board dated 22nd March 2012 informing the occupants of building “A” that a proposal of redevelopment under DC Regulation 33(7) is submitted by an architect and the board’s representative will visit the tenements for inspection of documentary evidence. This letter was received from the board but the Respondent No. 3 never approached the Petitioners by placing before them any scheme of redevelopment under Regulation 33(7) of the Development Control Regulations for Greater Bombay and instead filed a suit. Thereafter,

the board is faulted for having circulated a list of occupants of all three buildings.

13. Then the Petitioners state that the 3rd Respondent submitted a proposal to the board for initiating an action under Section 95A of the Act. That is how the Petitioners were kept in dark, according to them, of a No Objection Certificate for amalgamation and redevelopment of all the three plots. They are unaware of any such amalgamation and claim that 70% of the occupiers as far as and at least building "A" is concerned have not been supporting the Respondent No. 3. The Respondent No. 3 has introduced bogus names so as to demonstrate a support of 70% and that is by resorting to some process styled as amalgamation. That is how the NOC granted by the board is termed as illegal and not binding on the Petitioners. It is on this basis and alleging that the certified list contains five names which are bogus, two false consents and six occupants like the Petitioners having not given the consent, minus all this from the list, the 70% consent is not forthcoming.

14. That is how each of these communications and styled as referable to Section 95A of the Maharashtra Housing and Area Development Act, 1976 are challenged before us. We have heard Mr. Mahadeshwar appearing for the Petitioners for some time. We have found from the Petitioners' averments that they claim that the Respondent No. 3 has not taken recourse to DC Regulation 33(7) but has filed a specific suit and claiming that it requests the eviction

and dispossession of the Petitioners and occupants of building “A” from their respective premises/tenements so as to demolish that building and re-erect new building in its place. If that is how the Petitioners’ claim that they have been proceeded against by the 3rd Respondent and they are alleging that acting in connivance with or in collusion with the 3rd Respondent, the board is purporting to assist it in seeking eviction of the Petitioners in an indirect manner then we do not see how mere issuance of notice in the above form would affect any of the rights and contentions of the Petitioners.

15. They can resist these notices by pointing out that legal proceedings for their eviction are pending and unless and until they are dispossessed and evicted in accordance with law or by due process of law, such methods as are resorted to, namely by issuance of notice under Section 95A, Respondent No. 3 cannot secure their eviction. Thus what is prohibited directly cannot be secured in an indirect or oblique manner. We have no doubt that the contents of the communications and the letters impugned in the Writ Petition themselves would enable the Petitioners to take recourse to such legal proceedings as are permissible in law.

16. We cannot, on some factual assertions of the Petitioners and when there is a clear dispute pending in a competent Court, entertain this Petition. We cannot entertain any of the claims and whether the Petitioners are bona fide occupants or have a right, title and interest in the premises, based on which they can occupy or

claim tenancy against the Respondent No. 3. For all these reasons we are unable to entertain the Writ Petition and it is dismissed but by the above clarification and by expressing that we have not examined any of the contentions of the parties.

17. At this stage Mr. Surana appearing on private notice on behalf of Respondent No. 3 states that though the proceedings under Section 95A against the Petitioners and others may go on, this Court may direct that for a period of four weeks the Petitioners should not be evicted from the premises.

18. Since this suggestion is coming from the Respondent No.3, we accept the statement of Mr. Surana and direct that for a period of four weeks from today, no coercive measures, including dispossessing the Petitioners forcibly shall be taken. However, this order and direction is without prejudice to the rights and contentions of all parties and shall not bind any Court or Forum, which may be approached by the parties.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)