

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1355 OF 2014

Radhakrishna Co-operative Housing
Society Ltd. & Anr.

.... Petitioners

Vs.

State of Maharashtra & Ors.

.... Respondents

Mr. Yadunath Chaudhari with Ms Reena Salunkhe for
the Petitioners.

Mr. Rajiv Mane, AGP, for Respondent No.1-State.

Ms Aparna Murlidharan i/by Mr. P.G. Lad for Respondent
Nos.2 to 4.

Mr. Raju Moray i/by Mr. Sagar A. Rane for Respondent
No.6.

CORAM: S.C. DHARMADHIKARI &
M.S. SONAK, JJ.

DATE : AUGUST 12, 2016

P.C:

1. Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976, under which the acquisition proceedings were initiated, concluded in the making of an Award dated 30-4-1994. That Award and the steps that are contemplated by Chapter VIII-A are challenged in this writ

petition filed on 28-4-2014.

2. To such a writ petition, respondent No.6-Trust was impleaded as a party respondent.

3. The impleadment was allowed by this Court with some purpose. The immoveable property is City Survey Nos.772, 779 and 780 on which two buildings and of the name of respondent No.6-Trust are standing and for quite some time. It is the co-operative society of the occupants of these buildings and a builder developer who has been engaged by them, though awaiting conveyance of the title in their favour, have filed this petition.

4. Admittedly, respondent No.6 filed a similar petition and with identical prayers. That writ petition was placed before a Division Bench of this Court and which, after hearing both sides, by a detailed order, dismissed the same. The petitioners have candidly disclosed the fate of that petition and the order in

the same. A copy of the order in that writ petition is also annexed to the present petition as Annexure-E and those proceedings are referred, in detail, in the present proceedings.

5. Only contention raised before us is that, the legality and validity of the entire Chapter being an issue in the case of the *Property Owners Association Vs. State of Maharashtra and others* and pending consideration of the Hon'ble Supreme Court of India, the plight of the petitioners/occupants has enabled them to move this Court for what the petitioners are seeking is that, though there is a restraint order passed by the Hon'ble Supreme Court of India and the conveyance cannot come through, yet, the petitioners be allowed to reconstruct the buildings or to redevelop the property so that those presently in the dilapidated structure and unsafe for human habitation would have a safe and sound structure for their residence. It is that which has enabled them to come to this Court and, therefore, they are seeking a direction to the Maharashtra Housing and Area Development Authority to consider the

request of the petitioners and enable them to develop the property. Reliance is also placed upon Section 103-I of the Maharashtra Housing and Area Development Act, 1976 and some orders stated to have been passed in some proceedings of such occupants.

6. We are unable to agree with Mr. Chaudhari for more than one reason. A belated challenge now at the instance of these petitioners, and when the owners have miserably failed, cannot meet with success given that there is an order passed in the owners' writ petition, copy of which is at page 52. Secondly, the petitioners having no right, title and interest in the land over which these buildings are standing and which now vest in MHADA post-acquisition, we cannot proceed on the footing that Chapter VIII-A is struck off from the statute book for it is very much in the statute book and is presumed to be valid and constitutional unless declared to be so by the Competent Court. Section 103-I of the Act, appearing in that very Chapter, postulates reconstruction of new building of a co-operative

society. The co-operative society which proposes to carry out structural repairs to the building and the building or any part thereof is required to be vacated, or to reconstruct a building after the existing building is required to be demolished, the occupiers thereof, on being called upon by a notice in writing by the co-operative society, shall vacate their tenements. It is that step which is contemplated by sub-sections (1) and (2) and thereafter what the co-operative society should do and how it should accommodate all the occupiers and its members is then set out by the provision. However, for that to come into effect we must notice the prior statutory provisions and why by Chapter VIII-A, Section 103-A has been brought on the statute book. That applies to certain buildings. Section 103-B provides for acquisition of cessed property for co-operative societies of occupiers. Once the acquisition has to be made for such an entity, then, it is that entity which initially moves the State Government for acquiring the land together with the existing building thereon, or where the building owner does not own the land underneath or appurtenant to such building but holds it as

a lessee or licensee, or where any person holds the building or the land underneath or appurtenant to such building or both under a lease or license, then, to acquire the right or interest of such owner or person that Section 103-B contemplates acquisition. It is, therefore, at the instance of the co-operative society of occupants and on the acquisition being complete with the land vesting in it, the Board shall require the society to get itself registered. Then it is that co-operative society by whom the proceedings are initiated and who will be conveyed the right, title and interest and by executing the necessary documents. It is such a society which gets the benefit of Section 103-I.

7. The petitioner No.1 is not such a society. In such circumstances, we do not think that either this society or anybody seeking through it much less petitioner No.2 would be entitled to seek the relief and so belatedly.

8. We are, therefore, of the view that in writ jurisdiction and so long as the statutory provisions stand, we

cannot issue any writ contrary to it. That would be wholly impermissible and rather making a mockery of the rule of law. We find no merit in the writ petition and it is dismissed.

(M.S. SONAK, J.)

(S.C. DHARMADHIKARI, J.)