

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1262 OF 2013

Ahmed Haji Abdulla and Ors. }	Petitioners
versus	
Mumbai Building Repair and }	
Reconstruction Board }	
and Ors. }	Respondents

**WITH
WRIT PETITION NO. 1798 OF 2015**

Murga Giran Co-operative }	
Housing Society Ltd. }	Petitioner
versus	
Mumbai Building Repair }	
and Reconstruction Board }	
and Ors. }	Respondents

Mr. Sunil D. Mogre for the Petitioners in
WP/1262/2013.

Mr. Deepak Chitnis i/b. M/s. Deepak
Chitnis-Chiparikar for the Petitioner in
WP/1798/2015 and for Respondent No. 4
in WP/1262/2013.

Mr. H. C. Pimple i/b. Mr. Jevnold J. Xavier
for Respondent No. 2/BMC in both
Petitions.

Mr. Ashutosh Gavnekar i/b. Mr. Gautam
S. Hiranandani for Respondent No. 3 in
WP/1262/2013 and for Respondent Nos. 3
to 8 in WP/1798/2013.

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

DATED :- FEBRUARY 12, 2016

P.C. :-

- 1) We have heard both sides.
- 2) We have an old Writ Petition bearing Writ Petition No.1262 of 2013 and which is filed by Ahmed Haji Abdulla and others. That seeks a direction to the statutory authorities and namely the Municipal Corporation of Greater Mumbai. The relief is founded on the claim of the Petitioners to a permanent alternate accommodation for carrying on their commercial business. The business that they carry on is that of a restaurant. The Petitioners have sought a direction to Respondent Nos. 1 and 2, namely, Mumbai Building Repair and Reconstruction Board and the Municipal Corporation of Greater Mumbai to initiate legal action against Respondent No. 3 for violating terms and conditions of No Objection Certificate (NOC) dated 4th December, 2012, Annexure 'B' to the Petition.
- 3) Mr. Mogre appearing in support of this Petition submits that the tenements meant for sale in the construction that was proposed to be carried out and indeed carried out by Respondent No. 3 has not resulted in all those entitled and declared eligible being put in possession. The Consent Terms dated 30th September, 2006 would denote that the Petitioners in this Writ Petition are entitled to certain floor space area. It is for

carrying on their restaurant business styled as New Taj Hotel. The Petitioners state that Respondent No. 3 Developer goes on varying and changing plans of construction and that is why the Municipal Corporation is not sanctioning the same. Similarly, if there are certain breaches and violations of the Commencement Certificate/Intimation of Disapproval (IOD) as also the NOC of the Mumbai Board, then, these authorities should have proceeded against the Developer and not forced the party like the Petitioners to approach this Court in Writ Jurisdiction.

4) The arguments of Mr. Mogre are more or less supported in the substantive Writ Petition filed by the Co-operative Housing Society being Writ Petition No. 1798 of 2015. The Society also makes serious allegations against the Respondent Developer, namely Ms. Lakdawala Developers Private Limited. The Co-operative Housing Society seeks a Writ of Certiorari or a Writ, order or direction calling for the records pertaining to the work and construction on an immovable property more particularly described in prayer clause (a) of the Writ Petition and on the scrutiny of the same and related documents, the Respondents be directed to forthwith sanction amended plan by issuance of a IOD and Commencement Certificate and thereafter to grant Occupation Certificate.

Equally, a direction is sought to grant Occupation Certificate in respect of the construction which is carried out in accordance with sanctioned plan dated 18th September, 2003. It is apparently the remaining work or balance construction work which has not been completed, according to the Society.

5) We have heard, in the Society's Petition, Mr. Deepak Chitnis. We have also heard the learned Advocate appearing for the Developer in both the Petitions.

6) On the earlier occasion, we had summoned the concerned municipal officer and to remain present with the original records today.

7) Mr. Pimple appears for the Municipal Corporation of Brihan Mumbai and states that it is incorrect to assume that the Society has given a NOC so that the amended plans can be sanctioned. The no objection is not unconditional, but conditional.

8) On the other hand, Mr. Mogre submits that there is a violation of the terms and conditions of the permissions and approvals granted, but the statutory authorities are maintaining silence and not taking any action.

9) In such state of affairs, it is evident that Writ Jurisdiction cannot be a remedy for either Petitioners. The

contractual exercise and in terms of the prior approvals and permissions of the statutory authorities is being carried out. The Developer has been inducted so as to carry out a development activity. The Co-operative Housing Society and equally the Petitioners in Writ Petition No. 1262 of 2013 desire to obtain fruits of the development work and construction activity at site.

9) True it is that there is a role played by the statutory authorities else the construction and development could not have commenced and carried out. However, there are disputed questions and as to who was responsible for the construction work not being completed and remaining incomplete. Similarly, whether the Society has allowed the developer to carry out the construction work and has not obstructed it at any time as is claimed by the Developer are matters which we cannot resolve in our limited jurisdiction.

10) All that we can, in the given facts and circumstances, direct is that if any plans are awaiting sanction by the Municipal Corporation, as claimed by the Developer and equally by the Society, then, let the Municipal Corporation and the competent official therein take a decision and communicate the same to the concerned parties. Mr. Pimple has taken instructions from the officer concerned, who is present in Court and he states that such

a decision will be taken within a period of four weeks from today. Let the Developer co-operate by producing all the relevant papers and documents for scrutiny and perusal of the competent official. In no case, we would extend the time for compliance by the municipal authorities.

11) When we direct as above in these Writ Petitions, we are not in any manner foreclosing the remedies of either the Society or the Petitioners in Writ Petition No. 1262 of 2013. Without prejudice to the respective rights and contentions, we direct as above. Equally, the remedies, rights and contentions of Respondent No. 3 Developer are not prejudiced or affected by these directions. All contentions of all parties are kept open.

12) Both the Writ Petitions are disposed of with the above directions.

(M.S.SONAK, J.)

(S.C.DHARMADHIKARI, J.)