

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

WRIT PETITION (L) NO.2208 OF 2016

Rashid Ahmed S/o. Gulam Rasul	...	Petitioner
Versus		
Executive Engineer And Others	...	Respondents

AND

WRIT PETITION (L) NO.2209 OF 2016

Liberty Tea & Co.	...	Petitioner
Versus		
Executive Engineer And Others	...	Respondents

AND

WRIT PETITION (L) NO.2210 OF 2016

Arif Akbar Maknojia	...	Petitioner
Versus		
Executive Engineer And Others	...	Respondents

AND

WRIT PETITION (L) NO.2211 OF 2016

Bilal Umar Loria	...	Petitioner
Versus		
Executive Engineer And Others	...	Respondents

AND

WRIT PETITION (L) NO.2212 OF 2016

Liberty Tea & Co.	...	Petitioner
Versus		
Executive Engineer And Others	...	Respondents

AND

WRIT PETITION (L) NO.2213 OF 2016

Arif Akbar Maknojia

...

Petitioner

Versus

Executive Engineer And Others

...

Respondents

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Mr. G.S. Godbole, Senior Advocate i/b Manisha B. Gawde for the Petitioners in all the Petitions.

Mr. Vijay Tulzapurkar, Senior Advocate a/w Rati Lodha i/b Lodha Legal for Respondent No.5 in Writ Petition (L) No.2208 of 2016 and Writ Petition (L) No.2213 of 2016.

Mr. P.G. Lad a/w Ms. Aparna Muralidharan for MHADA-Respondent Nos.1 to 3 in Writ Petition (L) No.2208 of 2016, Writ Petition (L) No.2211 of 2016 and Writ Petition (L) No.2213 of 2016.

Ms. Rupali Dixit i/b Sharmila Deshmukh for MHADA in Writ Petition (L) No.2209 of 2016, Writ Petition (L) No.2210 of 2016 and Writ Petition (L) No.2212 of 2016.

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CORAM : S.C.GUPTE, J.

DATE : 19 AUGUST 2016.

P.C. :

. Heard learned Counsel for the parties.

2 These writ petitions challenge orders passed by the Executive Engineer of Mumbai Building Repair And Reconstruction Board, Mumbai (“MBRRB”) under Section 95A of the Maharashtra Housing & Area Development Act, 1976 (“the Act”). The Petitioners claims to be tenants in respect of shop premises in a building known as Huseini Building, 207/3, Saifee Jubilee Street, Bhendi Bazar, Mumbai-400 003. Respondent No.5 is a public trust registered under the Maharashtra Public Trusts Act, which has undertaken the work of redevelopment of the entire area, including the subject building, under DCR 33(9). In pursuance of the redevelopment scheme, Respondent No.5 required the Petitioners to vacate their respective

premises and shift to the transit accommodation offered by it. Since the Petitioners refused to comply, on the application of Respondent No.5, the Executive Engineer of MBRRB passed the impugned order directing eviction of the Petitioners under Section 95A of the Act.

3 DCR 33(9) concerns cluster redevelopment of buildings coming within Urban Renewal Schemes. Appendix III-A of the Development Control Regulations for Greater Mumbai, 1991 provide for regulations for reconstruction or redevelopment of cluster(s) of buildings by implementing Urban Renewal Scheme. Schemes for redevelopment of a cluster of buildings and structures over a minimum area of 4000 sq. mt. in the Island City of Mumbai come within these regulations. Under these regulations, an empowered committee consisting of various high ranking officers of the State Government including Vice President and Chief Executive Engineer of MHADA as ex-officio members, is constituted. The regulations contemplate that an Urban Renewal Scheme proposal with proof of ownership or procurement of development rights in respect of at least 70% land under proposed Urban Renewal Scheme shall be submitted by the developers. In the case of existing building/s, the regulations require irrevocable registered written consents by not less than 70 per cent of eligible tenants/occupants of the existing buildings on all plots involved in the Urban Renewal Scheme. Once a proposal for redevelopment is submitted to the authority after obtaining written consents of not less than 70% of eligible tenants/occupants and a No Objection Certificate for such redevelopment is issued by MBRRB through the empowered committee to the owner or the proposed co-operative housing society, as the case may be, the proposal is binding on all occupiers who have to vacate their respective

premises. If they do not so vacate the Executive Engineer of MBRRB is authorised to order their eviction under Section 95A of the Act. That broadly is the scheme of the relevant provisions of law referred to above.

4 An Urban Renewal Scheme, in pursuance of these provisions, has been proposed by Respondent No.5 in respect of the entire local area of Bhendi Bazar, which includes the building in which the shops forming the subject matter of the present petitions are situated. A proposal of cluster redevelopment has been submitted to MBRRB after obtaining the requisite number of consents of eligible tenants/occupants. Approval in the form of a letter of intent (LoI) has been granted by the empowered committee to Respondent No.5 for cluster redevelopment of Bhendi Bazar area. The redevelopment proposal, is in the premises, binding on all occupants and there is an obligation on their part to vacate the premises. On refusal of occupants to vacate the premises, it is competent for the Board to effect summary eviction of the occupants under Section 95A of the Act. The Petitioners have all been directed to be evicted by Respondent No.1 in terms of these powers under Section 95A.

5 The only material grounds, which are urged by the Petitioners in the present Petitions challenging the impugned order, are that the premises occupied by the Petitioners are not as of now obstructing, or creating any obstruction in, the implementation of the cluster redevelopment scheme. It is submitted that the opinion formed by Respondent No.1 that the redevelopment scheme undertaken by Respondent No.5 is being obstructed by these Petitioners is based on no evidence. The chief planks of the Petitioners' grounds urged in the Petitions in this behalf are that the work

of construction at the site has not commenced; that the photographs produced by the Petitioners clearly show that the subject premises are in line with the transit accommodation constructed at site by Respondent No.5; that in the premises, conditions for taking action under Section 95A of the Act have not been fulfilled; and that accordingly, the impugned orders are liable to be struck down.

6 If one has regard to Section 95A, it is quite apparent that the section itself has no requirement either that the construction work should have actually commenced or that the premises sought to be vacated should be immediately obstructing the construction programme scheduled by the proponent of the scheme. Section 95A has been enacted to enable speedy implementation of redevelopment schemes undertaken under the relevant provisions of the Development Control Regulations for Greater Mumbai. Where the conditions specified under Section 95A, namely, (i) consent of 70% of members, (ii) permissions such as no objection certificate for reconstruction referred to under Section 95A and (iii) provision of adequate transit accommodation, are satisfied, the Authority referred under Section 95A is required to direct the occupiers to vacate the premises summarily, so as to enable the redevelopment contemplated under the relevant DCR. Section 95A does not take into account any particular timeline for such eviction or relate it to the actual construction programme. It cannot possibly be disputed that the building in which the subject premises are situated is part of the redevelopment scheme under DCR 33(9) and that the premises are required to be vacated for implementation of the scheme. All jurisdictional requirements under Section 95A, namely, written consent of specified number of occupiers, no objection

certificate/permission for reconstruction and availability of transit accommodation, are satisfied in the present case and no fault can be found with the impugned orders passed by the Authority.

7 At the hearing of the Petitions, Mr. Godbole, learned Senior Counsel appearing for the Petitioners, makes additional legal submissions, which do not form part of the grounds urged in the Petition. He submits that Section 95A, considering the scheme of the Act and particularly Sections 88 to 95 preceding it, contemplates the it is to be invoked in cases where the board constituted under the Act either undertakes structural repairs of buildings which are in ruinous condition and likely to deteriorate and fall, or where repairs or reconstructions of buildings are necessary in respect of the buildings which suddenly collapse or become inhabitable or where acquisitions are required under Section 93 of the Act. It is submitted that Section 95A has no application to a cluster redevelopment scheme coming within DCR 33(9). Similarly, it is submitted, for summary eviction of occupiers under Section 95A, a no objection certificate for reconstruction of the building issued by the Board under the Act is a prerequisite and the LoI issued by the empowered committee does not amount to such no objection certificate. I am afraid, the submission has no merit. The subject is already concluded by a Division Bench judgement of this Court in case of **Rashida Shabir Tinwala Vs. Bombay Building Repairs and Reconstruction Board**¹. That judgement was in respect of the same Urban Renewal Scheme, with which we are concerned in the present Petitions. The argument before the Division Bench was that the conditions of Section 95A, namely, that the owner of the building or the proposed co-operative

1 Writ Petition (L) No.1662 of 2015 decided on 2 July 2015.

housing society submits a proposal to the Board for reconstruction of the building after obtaining the requisite consents of occupants and the Board issues a no objection certificate for such reconstruction to the owner or to the proposed co-operative society, as the case may be, were not satisfied in respect of eviction of occupiers in an urban renewal scheme coming within DCR 33(9). The Division Bench, after considering the relevant provisions of the Act and the DCR, came to the conclusion that an approval in the form of LoI granted by the empowered committee under Appendix IIIA to DCR 33(9) satisfies the requirement of the no objection certificate referred to under Section 95A. It specifically held that once the empowered committee issues an LoI, no separate or independent no objection certificate is required from the Board within the meaning of Section 95A, and in the event such LoI is issued by the empowered committee, any occupier refusing to vacate the premises and shift to the transit accommodation offered to him, may legitimately invite an action under Section 95A. That being the position, no fault can be found with the impugned order of summary eviction on the ground of inapplicability of Section 95A.

8 Mr. Godbole, learned Senior Counsel submits that his clients have no objection to shifting to the transit accommodations, but they are not agreeable to the permanent accommodation offered to them in the redeveloped building. He submits that the allotment of permanent accommodation has been made arbitrarily without following any principle of law; and that his clients are entitled to suitable alternative accommodations on ground floor and with road frontage. The submission has no merit. A dispute as to the suitability or otherwise of permanent

alternative accommodation cannot be a subject matter of an action under Section 95A. In fact, as held by a Division Bench of our Court in the case of **Mrs. Radhika George Vs. Maharashtra Housing and Area Development Authority**², Section 95A does not require the Authority to determine the rights of the parties *inter se*. The proceedings under Section 95A are not full fledged judicial proceedings as if in the case of a Civil Suit. The Authority referred to under Section 95A simply has to act upon finding of the jurisdictional facts, namely, (i) there is a collective decision of a requisite number of occupiers supporting the reconstructions; (ii) there are permissions like no objection certificate referred to under Section 95A; and (iii) the developer has provided an adequate transit accommodation.

9 In the face of these facts, if the occupiers of the building refuse to vacate the premises, the Authority must act and order summary eviction of the occupiers.

10 In the premises, there is no merit in the Writ Petitions and the same are dismissed with no order as to costs.

11 Learned Counsel for the Petitioners applies for stay of the impugned order. There was no stay operating till date in respect of the impugned order. Now that the impugned order is affirmed by this Court after a comprehensive hearing, there is no question of staying the impugned order. The application for stay is accordingly rejected.

(S.C.GUPTE, J.)

² Appeal (L) No.359 of 2012 decided on 4 July 2012.