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

WRIT PETITION (L) NO.3057/2016

Shankar Vasudeo Sawant … Petitioner

Vs.

The State of Maharashtra & Ors. … Respondents

Mr. Omar K. Shaikh for the petitioner
Mr. Y. S. Upadhyay, AGP for the respondent No.1.
Mr. Naushad Engineer a/w. Mr. Hemang Raj Thatte, Jayesh Mestry i/b. RMG Law Associates for respondent No.4.

**CORAM : K. K. TATED, J.**
**DATE : NOVEMBER 21, 2016**

**P.C.:**

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.

2. Heard. By this petition under Article 226 and 227 of the Constitution of India, the petitioner challenges order dated 31.11.2016 passed by respondent No.2 u/s.95A(2) of the Maharashtra Housing and Area Development Act, 1976 (MHADA) directing the petitioner to vacate and hand over vacant and peaceful possession of Room No.870, Chawl No.121, Gajmukh Chawl, Sarvoday Nagar, Majaswadi, Jogeshwari (East), Mumbai – 400 060 to the developer for carrying out development work.

3. The learned counsel for the petitioner submits that the petitioner is in possession of residential as well as commercial premises. In support of that he relies on letter dated 09.01.1995 issued by respondent No.2. He submits that the petitioner has no objection to hand over vacant and peaceful possession of his premises to the respondent developer for development on condition that the developer to pay compensation for the commercial premises also. He submits that as on today, the developer has offered compensation only for residential premises. He submits that the developer has paid monthly compensation in respect of the commercial premises to the other occupants. In support of that he relies on letters dated 28.11.2011 and 01.03.2012 of developer. He submits that if the developer is ready and willing to pay monthly compensation in respect of commercial premises also, they have no objection to hand over vacant and peaceful possession of the Gala to the developer.

4. On the other hand, the learned counsel for respondent No.4 developer vehemently opposed the petition. He submits that in the present project, in all 579 tenements are involved. He submits that out of it, near about 92% tenement holders gave their consent. He further submits that 455 occupants have already vacated their tenements and same were demolished by them. He submits that the developer is paying monthly compensation to the occupants only in respect of the residential premises. He submits that as per the redevelopment agreement dated 06.03.2009 and clause 6(c), they are liable to pay monthly compensation only in respect of the residential premises and Rs.10,000/- towards transportation charges. He relies on clause 6(c) which reads thus:

*"6(c) **Rent For Transit Accommodation:***

*During the meeting held along with the developer on 06.02.2009 the rent was revised and the same was agreed as mentioned herein. The Developer shall also pay a rent during the period of vacation of the member till the member is rehabilitated in his newly constructed flat a rent of Rs.12,000/- p.m. for the first year from the date of vacation of the premises and Rs.15,000/- for the second year from the date of vacation of the premises to the respective members as per the list Annexure "F". The amount of all the existing members will be released by the Developer at the time of shifting of the tenants. The Developer will arrange to transfer all members to the transit accommodation and bring back to his flat at his cost or the Developer will pay fixed amount of Rs.10000/- (Rs. Ten Thousand only) towards shifting of the tenants as transportation charges. Further the developer has agreed to pay an one time amount of Rs.12,000/- to the members towards brokerage charges for shifting into transit accommodation. In case the work is not completed within 24 months by the developer then the developer shall pay rent of Rs.18,000/- per month for the increase in period beyond 24 months."*

5. The learned counsel for respondent No.4 submits that they are not paying any monthly compensation in respect of the commercial premises. Therefore, there is no question of considering the request made by the counsel for the petitioner. He further submits that in the same project, some of the occupants i.e. Rajaram Laxman Chickne and others filed proceedings before this court being Appeal from Order No.1213/2012 with civil application No.1648/2012. He submits that this court (Coram : S.C. Dharmadhikari, J.) by order dated 19.11.2012 dismissed that Appeal from Order. He relies on para 10, 11 and 16 of the judgment which reads thus:

10. The orders passed under Section 95A of the MHADA Act, 1976 are in furtherance of the Redevelopment Agreement and prior thereto the resolutions and decisions of the Cooperative Society. Equally, there is concurrence of the MHADA and it desires that the property belonging to it, should be redeveloped by members of the Society. It is only to facilitate redevelopment of the property through the Cooperative Society, that the Mhada has exercised powers conferred in it. There is unsuccessful attempt to challenge the orders of eviction passed by the competent authority under this provision and it may be that all Appellants are not parties to the earlier around of litigation, namely, Writ Petition No.973/2012 decided on 02.05.2012, but the fact remains that neither these Appellants nor persons similarly situate as them, have been able to obtain orders restraining the implementation, execution and enforcement of the decisions of the Society and equally, the orders passed by the competent authority under the MHADA Act, 1976. In such circumstances the learned Judge was in no error in refusing to protect the Appellants before me by granting ad interim order staying the effect and implementation of the directions of the Competent Authority, namely, Executive Engineer issued under Section 95A of the MHADA Act, 1976.

*11. The argument that Section 95A could not have been invoked when the case falls under Regulation 33.5 of the Development Control Regulation for Greater Mumbai, 1991 (for short, DC Regulation), need not detain me.*

12. .........
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16. *If there was any doubt, that is set to rest by a judgment in Appeal (L) No.359/2012 decided on 04.07.2012 reported in 2012(4) All M.R. 918 (Radhika George v/s MHADA and others). The Division Bench while dealing with identical objection has held thus:“*

> *20. Section 95A is enacted in respect of redevelopment of old tenements. Provisions of the Development Control Rules*

*also came to be amended. Section 95A and DCR 33(5)(7) reads as under:“*

*95A Summary eviction of occupiers in certain cases.*

*(1) Where the owner of a building or the members of the proposed cooperative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less then 70 per cent of the total occupiers of that building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed cooperative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises:*

*Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.*

*(2) On refusal by any of the occupant to vacate the premises as provided in subsection (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act to effect summary eviction of such occupiers.*

*(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.*

*“DCR 33(5)(7) In any Redevelopment scheme where the Cooperative Housing Society / Developer appointed by the Cooperative Housing Society has obtained No Objection Certificate from the MHADA / Mumbai*

> *Board thereby sanctioning additional balance FSI with a consent of 70% of its members and where such NOC holder has made provision for alternative accommodation in the proposed building (including transit accommodation) then it shall be obligatory for all the occupiers / members to participate in the Redevelopment Scheme and vacate the existing tenement for the purpose of redevelopment. In case of failure to vacate the existing tenements, the provisions of section 95A of the MHADA Act mutatis mutandis shall apply for the purpose of getting the tenements vacated from the non cooperative members".*

*21. The object of the legislature by introducing the amendments was to give an opportunity to the occupants of old structures who were unable to develop them for lack of resources to move to better accommodation at the same time create additional housing for general consumption. The State Government revised the FSI and encouraged housing development schemes by MHADA either by itself or by the housing societies. Section 95A was enacted to enable speedy implementation of such redevelopment schemes. The provision is to ensure seamless implementation of the project. When the housing societies decide to get their premises redeveloped,care should be taken that its members should have premises to stay when the original building is demolished and is being reconstructed. The members should not be left in lurch being out of shelter while the redevelopment goes at its own pace. Thus, what the authority needs to examine is whether its a collective decision i.e. whether 70% of members have consented, whether permissions like the NOC are in order and whether the developer has provided adequate transit accommodation. Once the authority under section 95A finds that these requirements are fulfilled, all that it does is to direct the members to shift to the transit accommodation awaiting reconstruction.*

*22. Action under section 95A does not result in determining rights of the parties per se. The authority under* *section 95A does not finally determine or terminate any ownership rights of the members of such societies. The provision is not intended to provide a forum to adjudicate the dispute inter se between the Society, members and the developers. Those disputes will have to be adjudicated in competent Courts of law. The proceedings under section 95A of the Act, cannot be converted into a full fledged judicial proceedings as if the authority is trying a civil suit. It also needs to be noticed that the authority i.e. executive engineer which passes the order under section 95A is not a judicial officer equipped to decide complicated question of law relating to dispute as to title etc.*

*23. The proceedings under section 95A cannot be converted into a civil trial as is sought to be done by the petitioner. If the members of the Society obtain any judicial orders restraining the Society or the developer from acting in furtherance of their intention to redevelop, then obviously the authority under section 95A will be bound by such judicial orders. In the present case, even though the appellants approached the Civil Court as well as the Cooperative Court in the year 2006 challenging the decisions of the Society to redevelop the property, they did not secure any interim orders for last six years. The Executive Engineer under 95A thus is not expected to arrogate himself the jurisdiction vested in Civil Court and Cooperative Court and decide the issue raised by the appellants in those proceedings. Once the jurisdictional facts before the Executive Engineer were satisfied and that there was no restraint order, the authority under section 95A had no other option, rather was under obligation to direct the appellants to move to transit accommodation to facilitate the redevelopment."*

6. On the basis of these facts, the learned counsel for respondent No.4 developer submits that there is no substance in the Writ Petition. Same to be dismissed, because more than 455 tenement holders have vacated their premises.

7. Heard both sides at length. It is to be noted that, in the present proceedings, the developer is ready and willing to provide all facilities including monitory compensation to the petitioner as per the redevelopment agreement dated 06.03.2009. It is to be noted that, out of 579 more 455 occupants have vacated their premises and same were demolished by the developer.

8. Considering these facts and also the earlier order dated 19.11.2012 passed by this court in Appeal from Order No.1213/2012 with civil application No.1648/2012, I do not find any substance in the Writ Petition. Same stands rejected.

**JUDGE**