IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6066 OF 2014
Smt. Nikita W/o Gopal Chauksay and another
-vs-
Housing & Urban Development Corporation Ltd., and others

AND

WRIT PETITION NO. 6917 OF 2014
Mehadi s/o Shabuddin Raiyani and others
-vs-
Housing & Urban Development Corporation Ltd., and others

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. A.M.Sudame, counsel for the petitioners.
Mr. K.N.Shukul, counsel for the respondent Nos.1 and 2.
Mr. R.B.Irkhede, counsel for the respondent No.3.

CORAM : SMT. VASANTI A. NAIK & MRS. SWAPNA JOSHI, JJ.

DATE : 13.06.2016.

Since the issue involved in these writ petitions is identical and the prayers made therein are also similar, they are heard together and are decided by this common order.

By these writ petitions, the petitioners have sought a direction to the Housing And Urban Development Corporation Limited that a no objection certificate be issued in favour of the petitioners for transferring the properties which they had sought to purchase from M/s. Ramnath Developers Private Limited, that had availed loan from the Housing And Urban Development Corporation Limited. The petitioners have challenged the action of the Housing And Urban Development Corporation Limited of refusing to transfer the properties in favour of the petitioners, as the builder/developer had not repaid the loan amount to the Housing And Urban Development Corporation Limited.

The petitioners had entered into agreements with the builder/developer to purchase flats/row houses in Ramnath City, situated in Mouza Bokhara, Tahsil and District Nagpur. It is the case of the petitioners that the petitioners had paid the consideration towards the purchase of the houses/apartments/row houses, except the charges that are required to be paid at the time of execution of the sale deed. According to the petitioners, the builder/developer with whom the petitioners had entered into the agreements for purchase of the properties had availed a loan from the Housing and Urban Development Corporation Limited and the project properties, including the properties, which the petitioners claim to have purchased, were mortgaged with the Housing and Urban Development Corporation Limited. The petitioners and the other purchasers were required to deposit the amount that was liable to be paid towards the purchase of the property in the Escrow Bank. It is stated that the builder/developer, however, withdrew the amount from the Escrow Bank. It is stated that the Housing and Urban Development Corporation Limited initiated action against the builder/developer under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In pursuance of the action under Section 13 of the Act of 2002, it is stated that an association of the persons that had entered into the agreements with the builder/ developer to purchase the villas/apartments/row houses had filed an intervention application in the proceedings that are filed by the builder/developer under Section 17 of the Act of 2002. It is the case of the petitioners that since the petitioners have paid consideration to the builder/developer and Housing And Urban Development Corporation Limited and only some amount is liable to be paid at the time of execution of the sale deed, it would be necessary to direct the Housing and Urban Development Corporation Limited to grant the no objection certificate for execution of sale deeds in favour of the petitioners. It is stated that the petitioners cannot be deprived of the properties for which they have paid the price.

On hearing the learned counsel for the petitioners and on a perusal of the documents annexed to the petition, it appears that the issues involved in this writ petition cannot be considered and decided, in exercise of the writ jurisdiction under Article 226 of the Constitution of India. This is a case where the petitioners have entered into the agreements with the builder/developer for purchase of flats/villas/row houses. If the properties that the petitioners have sought to purchase were mortgaged with the Housing and Urban Development Corporation Limited even before the execution of the agreements by the builder/developer, in favour of the petitioners, as per the case of the Housing and Urban Development Corporation Limited, it would not be proper for this Court to direct the Housing and Urban Development Corporation Limited to grant the no objection certificate for the execution of the sale deeds. According to the petitioners, the builder/developer has withdrawn the amount that was liable to be deposited in the Escrow Bank by the petitioners and the loan availed by the builder/developer is not repaid by the developer to the Housing and Urban Development Corporation Limited. The issues involved in this case cannot be decided, in exercise of the writ jurisdiction nor can a direction be issued to the Housing and Urban Development Corporation Limited to grant the no objection certificate for execution of the sale deed in favour of the petitioners. The other prayer that the developer/builder should not create third party interest in the properties in respect of which the agreements are executed in favour of the petitioners and the prayer that the builder/developer should not evict the petitioners from the premises could be sought in appropriate proceedings. The petitioners may institute appropriate proceedings against the developer/builder for compensation/damages. The issues involved in this case cannot be decided, in exercise of the writ jurisdiction. Also, the petitioners and the other persons, that have entered into the agreements with the builder/developer to purchase the properties, have already intervened in the proceedings filed by the builder/developer under Section 17 of the Act of 2002 before the Debts Recovery Tribunal.

In the circumstances of the case, we decline to entertain the writ petition. The writ petition is disposed of with no order as to costs. The points raised in the petition are however kept open.

At this stage, the learned counsel for the petitioners seeks the continuation of the order of *status quo* that was granted on 10/02/2015 for a period of six weeks. The prayer made on behalf of the petitioners is strongly opposed by the learned counsel for the respondents.

In the circumstances of the case, since similar petitions have been dismissed without granting or continuing the interim relief, we reject the prayer for continuance of the interim relief. Since the continuance of the interim relief would frustrate the object of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the prayer made on behalf of the petitioners stands rejected.

JUDGE **JUDGE**

KHUNTE