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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3825 OF 2016

Sayli Sunil Kadam and another Petitioners.

V/s

Maharashtra Housing and Area
Development Authority (MHADA)
and Others Respondents.

Mr. Sanjeev B. Deore, Advocate for the Petitioners.

Mr. Kamlesh Ghumare and Ms. Sonali Jadhav, Advocate for
Respondent No.1.

Mr. K.S. Dewal i/b Mr. J.M. Joshi, Advocate for Respondent No.2.

Mr. M.V. Limaye, Advocate for Respondent No.3.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 21st September, 2017

P.C.:-

1] Petitioners have approached this Court, seeking various reliefs, including quashing of the notice issued under Section 264 of the Maharashtra Municipal Corporations Act and directions to Respondent No.1 to terminate the conveyance deed executed between Respondent No.1 and Respondent No.2 dated 20/03/2012.

2] It appears that it is the case of the Petitioners that their mother

was the owner of the Flat bearing No.1697 in the building known as building No.44, Konkan Co-operative Housing Society Limited at Vartak Nagar, Thane. Since the said building was in a dilapidated condition, Respondent No.1 – MHADA directed demolition thereof for the purpose of reconstruction of the building. It appears that out of 80 members, 78 have already been entered into agreement for redevelopment. For the same reliefs, which have been claimed in the Petition, the present Petitioners, alongwith one another claimant, have challenged the notice issued by the Corporation by way of filing a suit being Suit No.122 of 2015. In the said suit, initially, learned Judge of the Trial Court had granted an order of injunction. The said order came to be challenged before the Appellate Court. The learned Judge of the Appellate Court vide order dated 7/10/2016 had set aside the order of injunction granted by the Trial Court. The same came to be challenged by Petitioner No.1 before this Court by way of Writ Petition No. 12286 of 2016. The learned Single Judge of this Court, upon perusal of inspection report, found that the building was in a dilapidated condition, not repairable and required reconstruction and, as such, she refused to interfere with the order passed by the Appellate Court.

3] The doctrine of election would provide that if a party has taken recourse to one remedy for claiming a particular relief, then, for the very same relief, it cannot be permitted to take recourse to another remedy. The aforesaid suit was filed by the present Petitioners on

18/02/2015, whereas the present Petition is filed subsequently on 29/02/2016 i.e. after a period of one year.

4] Petitioners, having elected to choose a remedy of civil court, in our view, cannot be permitted to prosecute the present Petition for the very same reliefs. In that view of the matter, Petition is rejected.

5] We, however, clarify that we have not considered rights of the parties insofar as allotment of the premises in the reconstructed building is concerned. Petitioners would always be at liberty to pursue their rights with regard to that before the appropriate forum.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)