

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.935 OF 2015
WITH
CIVIL APPLICATION NO.1139 OF 2015**

Khar Samata Co-op Hsg Society	...Appellant
<i>Versus</i>	
Raichand S Verma & Ors	...Respondents

Mr Rajiv Narula, *i/b Jhangiani Narula & Asso, for the Appellant.*
Dr G Sadavarte, *for Respondents Nos.1 to 4.*
Mrs Madhuri More, *for MCGM/Respondent No.5.*

CORAM: G.S. PATEL, J
DATED: 22nd June 2017

PC:-

1. The Suit itself can be disposed of.

2. The Appeal is against an order dated 11th September 2014. The details are now unimportant. There is no dispute that the building in question, known as the Khar Samata Co-operative Housing Society, is in a dilapidated condition. If there was any earlier controversy about this, it is put to rest by the MCGM Affidavit dated 19th October 2016 of one M.B. Sopanrao, Assistant Engineer, which is at pages 214 to 218 of the paper-book with

additional annexures. Annexed to this Affidavit is a copy of the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888. Also annexed is the advisory report of the Technical Advisory Committee of the MCGM opining that the building is dilapidated and in a damaged condition, requiring reconstruction. There are also photographs annexed to the Affidavit which show this condition.

3. The opposition to the suit comes from original Plaintiffs, four in number. They apprehend that their rights of possession will be adversely affected by this process of redevelopment and reconstruction. They do not dispute that the building is damaged. None of them presently reside there or occupy any portion of it. All other occupants have also vacated. The Plaintiffs are only anxious to ensure that their rights over premises are not jeopardised, and that, on reconstruction, they are each allotted premises with not less than an equivalent area that they were occupying before. The additional submission placed on behalf of the Plaintiffs is that they are protected by two orders dated 3rd July 2014 and 30th July 2015 of the Collector saying that the redevelopment cannot be done except for the benefit of certain Scheduled Castes.

4. It goes without saying that the notice of demolition under Section 354 of the MMC Act has nothing at all to do with possession and rights available to certain Scheduled Castes or any protection granted by the Collector. If the building is dilapidated and needs to be brought down, that is the responsibility of the Municipal Corporation as the Planning Authority. This does not mean that once the building is demolished the Appellant, which was the

original 3rd Defendant in this Suit, will automatically get rights of redevelopment. There may be restrictions on the number of persons who can be introduced as members, or the class or the persons who can be introduced or who may take up premises in the redeveloped building or even the work of redevelopment itself. All work and allotment of flats in the redeveloped building will have to be done in accordance with law and all applicable restrictions. The two exercises are distinct and must be kept distinct. Demolition is one aspect of it. Reconstruction and rehabilitation is another.

5. To the extent that the plaint seeks to prevent the bringing down or demolition of the building, reliefs will have to be denied to the Plaintiffs but this will have to be done with certain clarifications. It is therefore commonly agreed that the process of demolition of the building may proceed. However this will not automatically entitle the present Appellant (original Defendant No.3) to undertake the process of reconstruction without complying with all necessary applicable provisions, and subject to all applicable restrictions, including in particular clearances from the Collector, if any are necessary, and any restrictions or limitations as may legitimately exist as to the person or persons who may undertake the redevelopment and further restrictions as to the person, persons or class of persons for whom that redevelopment may be undertaken and to whom flats may be allotted in the redeveloped building. All existing protective orders, if any, will continue to operate and will remain unaffected by this order. This order is not to be construed to mean that this Court has either imposed or lifted any such restrictions or limitations as may exist.

6. In this view of the matter, the Appeal may be disposed of by permitting the demolition of the building in question on the terms set out above.

7. Parties are also agreed that this order will be sufficient to dispose of the Suit itself. Parties will appear before the Trial Court on 7th July 2017 and obtain the necessary orders for withdrawal of the suit and all interim applications.

8. The Appeal is disposed of in these terms. All Civil Applications are infructuous and are disposed of accordingly.

(G. S. PATEL, J.)