

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1564 OF 2014
WITH
CIVIL APPLICATION NO.2933 OF 2015
IN
WRIT PETITION NO.1564 OF 2014
WITH
WRIT PETITION NO.1592 OF 2014**

Saeed Mahfooz Baig & Ors.

...Petitioners

vs.

Sanjay Harishchandra Chavan & Ors.

...Respondents

Mr. Vikram Chavan for the Petitioners.

Mr. Sandesh Shukla a/w Ms. Namrat Barot I/b Navdeep Vora Associates for Respondent No.11.

Mr. Pradeep Patil for Respondent No.13 in WP No.1592/2014 and for Respondent No.14 in WP1564/2014.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 11th October, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith by the consent of the parties. The Petitioners herein are aggrieved by the order dated 2/7/2013 passed by the City Civil Court, Gr. Mumbai. The Petitioners herein had filed Misc. Civil Application No.96/2012 in L.C. Suit No.904/2009.

2. The facts of the case in the nutshell are that the original Plaintiffs in the said Suit were tenants of chawl viz., Afzal Chawl, C. S. No.1589, Dr. Anandrao Nair Marg, Mumbai Central. There were 155 residential tenants and the Petitioner No.1 and his parents were one of them. There were 17 commercial tenements. The said area was to be given for re-development. The tenants of the said chawl had formed a co-

operative housing society in the name and style Afzal Co-operative Housing Society. They had entered into an agreement with the present Respondent i.e. the builder/developer. Initially there was an agreement between the Society and the Developer that the tenants in the said chawl would be allotted separate tenement admeasuring 225 sq. ft. Subsequently, there was a modification in the agreement which said that the builder developer shall give 275 sq. ft. to each of the tenants. It appears that the dispute has arisen between the builder and the society to the extent that the builder was not willing to give the area as per modified agreement and, therefore a suit for specific performance was filed by 10 original tenants.

3. The Petitioners were not a party to the original suit. The MCGM and MHADA were the party Respondents. In the interest of justice, the builder developer i.e. the present Respondent No.11 and the Plaintiffs to the said suit had arrived at an amicable settlement and had decided to file Consent Terms in the original suit. The MCGM was deleted at that stage as a party Respondent.

4. The Petitioners herein had filed Chamber Summons seeking impleadment to the suit as a necessary party. The said application seeking impleadment was rejected. Being aggrieved by the said order the Petitioners had filed Writ Petition No.8478/2011.

5. During the pendency of the said petition, the parties to the suit had arrived at an amicable settlement and a consent decree was passed. In view of this on 19/12/2011 the counsel for the Petitioners had mentioned before the Court that there has been amicable settlement and therefore prayers in the petition have become infructuous. The Execution Petition was filed bearing Execution Petition No.253/2012. At that stage the Petitioners had obstructed the execution of the said suit on the ground that

MCGM is a necessary party and that the Petitioner has an independent right to participate in the Execution Petition. It was also contended that execution is being sought against the Petitioners despite the fact that they are not parties to the suit. The Petitioners had filed Chamber Summons No.96/2012 thereby obstructing the execution of the said order. It was subsequently contended that the consent decree provides to vacate in all 24 occupants in the C and D wings of the suit property. It was also contended that upon such eventuality they would suffer irreparable loss. The learned Court had considered the equity and had stayed the possession warrant till the final hearing of the application. Respondent/Plaintiff were directed to file reply to the application and the case was adjourned. In the said proceedings the Petitioners had filed an application under Order 1 Rule 10 Sub-clause 2 contending therein that MCGM was a necessary party to the Execution Petition.

6. The learned City Civil Court by order dated 2/7/2013 has rejected the said application on the ground that MCGM was not a party to the Consent Terms. It was also observed by the Learned Court that the Corporation was shown as Respondent in the Obstruction proceedings, it was not necessary to file a separate application seeking impleadment of the MCGM as a necessary party to the obstruction petition.

7. Learned counsel for Respondent No.11 has stated that in fact the Petitioner No.1 was the promoter of the said society. That he had made illegal allotments at the time of constitution of the society. A criminal complaint was filed against him and law had taken it's own course. It is contended by the learned counsel for the Respondent that the Petitioners herein are holding 10 tenements. It is also pointed out that there are three flats in the rehabilitated building in the name of Petitioner No.1. viz., C-305, C-306 and D-301. There are two flats in the name of his mother viz.,

A-702, A-703, two flats in the name of his brothers and two flats separately in the name of their wives and one flat in the name of his sister-in-law. All this would show that as a municipal tenant they would only be entitled to one flat as per law. It is stated that the Petitioner No.1 had also filed a dispute under section 91 of the Maharashtra Co-operative Society Act 1960 before the Co-operative Court. The said dispute was dismissed and the matter was confirmed by the Co-operative Appellate Court. It is also submitted that the order of the Appellate Court dismissing the appeal is not challenged before the High Court.

8. Learned counsel for the Petitioners submits that as per Order 1 Rule 10(2) of the CPC, the MCGM would be a necessary party and, therefore the learned Court has committed a grave error in rejecting the said application.

9. At this stage learned counsel for the Respondent submits that the Petitioners herein were not parties to the original suit. Their application for impleadment was rejected, Writ Petition challenging the same was disposed of without taking any effective steps except by filing an Obstruction Petition in the Execution Petition.

10. Learned counsel appearing for the MCGM has submitted that since the MCGM was not a party to the suit no order was passed to the prejudice of the MCGM and that MCGM would not be a necessary party in the Obstruction Petition. It prima facie appears that the Execution Petition has been pending due to the filing of the Obstruction Petition and the Petitioners have enjoyed the fruits of the same by remaining in possession of certain tenements of which according to the Society they are not valid tenants. This would be a dispute between the Society and the Petitioners. The non execution of the order has caused grave prejudice to the Original

Plaintiffs. The order rejecting impleadment of MCGM as a necessary party to the Obstruction Petition cannot be interfered with as justifiable reasons are assigned and more particularly the learned Court has observed that the MCGM is a party to the Obstruction Petition filed by the Petitioners. Hence, the order does not call for any interference and the Petition is rejected to that extent. However, the Executing Court is hereby directed to decide the Obstruction Petition in the Execution Proceedings on or before 17/11/2017. As this Court has not gone into the merits of the Obstruction Petition or the Execution Petition the application for impleadment of MCGM is rejected. Petition is accordingly dismissed. Oral prayer is made for staying the order. However, taking into consideration the fact that Execution Petition would be frustrated since it is pending since 2011 i.e. for more than 7 years this Court is not inclined to stay this order. The Learned Executing Court shall decide the application. Civil Application does not survive in view of disposal of the Petition. The second Petition is also disposed of in view of the orders passed in the present Petition.

11. The learned counsel for Respondent No.11 submits that the proceedings are filed only to prolong or protract the execution proceedings. He upon instructions submits that whatever documents are there in their possession will be handed over to the Petitioners on demand on or before 10/11/2017 subject to the condition that the application is made to the office of the Society on or before 7/11/2017.

(SMT. SADHANA S. JADHAV, J.)