

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

WRIT PETITION NO.960 OF 2013

Baliram Shankar Chavan and Ors.	..	Petitioners
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

CONTEMPT PETITION NO.70 OF 2014

Baliram Shankar Chavan and Ors.	..	Petitioners
Versus		
M/s. Agnel Developers and Ors.	..	Respondents

WITH

WRIT PETITION NO.1475 OF 2014

E.W.S.Tenant Association	..	Petitioners
Versus		
State of Maharashtra & Ors.	..	Respondents

WITH

WRIT PETITION NO.1960 OF 2013

M/s. Chhaya Gems and Ors.	..	Petitioners
Versus		
State Bank of India	..	Respondents

WITH

NOTICE OF MOTION ST.NO.203 OF 2017

IN

WRIT PETITION NO.960 OF 2013

Baliram Shankar Chavan and Ors.	..	Petitioners
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Versus

State of Maharashtra & Ors.

.. Respondents

Mr. Tanveer Nizam i/b. M/s. Anjali Awasthi & Mr. Tushar Kochale for petitioners in W.P. No.960 of 2013

Mr. Tanveer Nizam i/b. Mr. Tushar Kochale for petitioner in CONPW No.70 of 2014

Ms. Jyoti Chavan, AGP for State – Respondent Nos. 1, 2, 4 and 5 in W.P.960 of 2013

Mr. Vishwanath Patil with Rupesh Lanjekar and Ms. Sayli Bhaidkar for respondent Nos. 3 and 8 in W.P.No.960 of 2013 and for respondent Nos. 24 and 26 in CONPW No.70 of 2014

Mr.Shankar P. Thorat for respondent No.6 in W.P.960 of 2013 and for respondent Nos. 8 to 14 in CONPW No.70 of 2014

Mr. Sahil Gandhi i/b. M/s. Markand Gandhi & Co. for respondent Nos. 3, 4, 6 and 7 in CONPW No.70 of 2014

Mr. Shyam Dewani with Chirag Chanani i/b. M/s. Dewani Associates for respondent No.10 in W.P.960 of 2013

Mr. Shreerana Bhandarkar for respondent Nos. 14 to 17 in W.P.960 of 2013

Mr. Atul G. Damle, Senior Advocate with Ms. Swati H. Sagvekar for respondent No.19 in W.P.960 of 2013.

CORAM : B.R.GAVAI &
RIYAZ I. CHAGLA, JJ.

DATE : 3rd July 2017.

P.C.

1] The petitioners have approached this Court being aggrieved by the order dated 5th April 2013 passed by the respondent No.2, whereby allowing the revision filed by the respondent No.3 and setting aside the order passed by the

respondent No.4 and confirming the N.O.C. granted by respondent No.5.

2] The brief facts giving rise to the present petition are as under:-

It appears that there were nine Cooperative societies in Pant Nagar area of Ghatkopar, Mumbai constructed by Maharashtra Housing and Area Development Authority (MHADA for short). Further, it appears that those nine societies resolved to go in for redevelopment. Since it was found very beneficial to undertake joint redevelopment on behalf of nine societies, the said nine societies passed resolution individually for forming the respondent No.3 and nominating three members each from their respective societies on respondent No.3. Further it appears that the respondent No.3 also came to be registered under the Bombay Public Trust Act with the competent authority. The respondent No.3, therefore, applied to the respondent No.5 for grant of N.O.C. for redevelopment. Respondent No.5 vide order dated 29th December 2005 granted N.O.C. It further appears that the requisite permissions from all the competent authorities, including the MHADA has also been obtained

for the purpose of said re-development.

3] The present petitioners are members of the various co-operative housing societies which are part of the respondent No.3. It appears that they filed a complaint before the Divisional Joint Registrar. The Divisional Joint Registrar converted the said complaint into a suo mottu Revision Application under section 154 of the Maharashtra Co-operative Societies Act, 1960 along with an application for condonation of delay. The said application for condonation of delay came to be allowed on 21st April 2011 and the Revision Application came to be allowed by the Joint Registrar, Co-operative Societies, on 3rd August 2011, whereby the N.O.C. granted by respondent No.5 (Deputy Registrar Co-operative Societies) was set aside.

4] Respondent No.3, after coming to know about the order passed by the respondent No.4, preferred a revision before the respondent No.1 and 2, being State of Maharashtra and Minister, Cooperation, State of Maharashtra. The respondent No.2, after giving an opportunity of being heard to all the concerned, including

the present petitioners, has allowed the said Revision, after condoning the delay and passed the impugned order. Hence, the present petition.

5] Mr. Tanveer Nizam, learned Counsel for the petitioner submits that the order passed by the Minister for Cooperation is without jurisdiction. Relying upon various judgements, including the judgement of the Full Bench of this Court in the case of **Shireen Sami Gadiali Vs. Spenta Coop. Housing Society Ltd., in Writ Petition No.6403 of 2010 decided on 21st April 2011, reported in LAWS (BOM)-2011-4-68 (BCR-2011-3-465)**, the learned Counsel submits that the second revision is not tenable. The learned Counsel further submits that the respondent No.3 in collusion with respondent No.19 – Developer has forcibly dispossessed the members of the society and has carried out developmental work against the wishes of the members of the society. He further submits that the members of the society cannot be compelled to undergo re-development against their wish or desire. The learned Counsel further submits that as a matter of fact, the respondent No.1 had no right to enter into an agreement with the respondent

No.19 for re-development.

6] Mr. Damle, learned Senior Counsel appearing on behalf of respondent No.19 on the contrary submits that after the NOC was granted by respondent No.5 in the year 2005, much water has flown under the bridge. He submits that re-development work was carried further. It is submitted that out of the total 512 members, 474 members have already been granted permanent alternate accommodation in the re-developed premises. He submits that all nine societies have also entered into individual agreement with the respondent No.19. The learned Counsel submits that the present petitioners are residing in the transit accommodation whereat respondent No.19 proposes to construct a building available for saleable area and as such the petitioners with a malafide intention are obstructing the said development work.

7] Insofar as the preliminary objection of the petitioner is concerned, no doubt, that the petitioner is right in contending that the second revision is not tenable. However, taking into consideration the conduct of the petitioners and the modus operandi

in which the petitioners have operated, we find that this is not a case where we would entertain the grievance of the petitioner in the extraordinary jurisdiction under Article 226 of the Constitution of India.

8] For the reasons to be recorded hereinafter, we also find that the interference in this matter would not be in the interest of large number of members of the nine societies nearing about 500.

9] It appears that in the year 2010, the petitioners made a complaint to the respondent No.4. The respondent No.4 in a surprising manner treated the said complaint as a revision along with application for condonation of delay. A perusal of the orders passed by respondent No.4 would reveal that the only respondent to the said revision was the Deputy Registrar, C.S.- respondent No.5. Neither the respondent No.3, who was undertaking the developmental work, nor the respondent Nos. 10 to 18 societies on whose behest the re-development activities were carried, were made parties to the said revision. The respondent No.5 in a novel way, without issuing a notice to the persons who were to be affected by the order, by one line condoned the delay vide his

order dated 21st April 2011 and again in the same manner without impleading the affected parties, the respondent No.4 allowed the revision vide order dated 3rd August 2011. A perusal of the order passed by the respondent No.4 dated 3rd August 2011 would reveal that the respondent No.4 only referred to the contentions as are put forth by the petitioners. The respondent No.4 further observed that the order which the Deputy Registrar had passed was without following principles of natural justice. We fail to understand as to when the learned respondent No.4 observed this how does he forget that principles of natural justice are also required to be followed by him.

10] The respondent No.3, after coming to know about the orders passed by the respondent No.4, has filed the revision before the State Government. The Hon'ble Minister, after giving notice to all the concerned parties, including the present petitioners, has passed the order thereby allowing the revision and setting aside the order dated 3rd August 2011 passed by respondent No.4 and confirming the NOC granted by respondent No.5. The Hon'ble Minister has found that the development work was carried out as per the NOC

granted by the respondent No.5 as well as MHADA. On the date of passing the order, the Hon'ble Minister has found that 223 members have already been granted accommodation in the re-developed buildings.

11] We are of the considered view that the petitioners who have permitted the construction work to progress and have also shifted to transit accommodation, now, after the buildings, wherein they are required to shift, are complete, have now filed the present proceedings only with some ulterior motive.

12] Insofar as the contention of the petitioner that they were forcibly dispossessed is concerned, Mr. Thorat learned Counsel appearing for MHADA submits that since the petitioners were obstructing in the developmental work, the MHADA while invoking powers under section 95 of the MHADA Act had got the premises vacated.

13] It is further submitted that a notice of motion, praying for ad-interim reliefs, which was filed by the present petitioners in a suit challenging the action of MHADA, was specifically rejected by the

City Civil Court, Mumbai. It is further submitted that in an Appeal from Order filed by the present petitioners, the learned Single Judge of this Court had refused to interfere.

14] In the backdrop of these facts, we find that the petitioners are not entitled for any equitable reliefs in the extra ordinary jurisdiction under Article 226 of the Constitution of India. We are also of a considered view that not entertaining the present petition is in the larger interest of about 474 tenants who have already shifted to the re-developed buildings as against the interest of only 8 persons. In any case, Mr. Damle, learned Senior Counsel appearing for respondent No.19 makes a categorical statement that the redeveloped accommodation for all the petitioners is ready and the respondent No.19 is willing to offer them the same at any point of time. In that view of the matter, we find that the present petition warrants no interference. The same is rejected.

15] In view of dismissal of the petition, nothing survives in the contempt petition and the same is dismissed as such.

(RIYAZ I. CHAGLA, J)

(B.R.GAVAI, J.)