

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 624 OF 2017**

Rustomjee Realty Pvt Ltd ...Petitioner
Versus
Maharashtra Housing and Area Development
Authority & Ors ...Respondents

**WITH
WRIT PETITION NO. 451 OF 2017**

New DN Nagar Co-operative Housing Societies ...Petitioner
Union Ltd
Versus
Maharashtra Housing and Area Development
Authority & Ors ...Respondents

**Mr Viraag Tulzapurkar, Senior Advocate, a/w Mr Simil Purohit,
Dhawal Mehta, Denzil A, Apeksha Munot, i/b Wadia Ghandy &
Co., for the Petitioner in WP/624/17.**
**Mr Navroz Seervai, Senior Advocate, a/w Mr R Ghadge, i/b
Appasaheb Desai & Co., for Respondent No. 3 & for the Petitioner
in WP/451/17.**
Mr PG Lad, for Respondent No. 1.
Mr Sukanta Karmarkar, AGP, for Respondent No. 4-State.

**CORAM: G.S. PATEL, J
DATED: 17th November 2017**

PC:-

1. Mr Lad for MHADA, the 1st Respondent, has the unenviable task of defending the indefensible. As we shall see, the MHADA communication impugned in these Writ Petitions, both filed under Article 226 of the Constitution of India, is entirely arbitrary and unreasonable. If this is the conduct and calibre of public authorities charged with civic governance and controlling development in this city, then perhaps all is now indeed lost.

2. Both petitions are occasioned by a single — and singular — document dated 25th April 2016 at page 33, Exhibit “A”. In this, MHADA wrote to the MCGM in the context of a redevelopment project being undertaken by the Petitioners for the 3rd Respondent society, and this is a very sizeable redevelopment including occupants of the lower and middle income groups, saying there was a ‘stay; on the development and the disposal of the project’s free—sale component. The development follows the usual pattern: part of the development is undertaken to house existing occupants or tenants found to be eligible, and, as an incentive to the developer, additional FSI is afforded for the construction of the residential units that the developer may put to sale in the open market.

3. There is a history to this development. The Petitioners were not the society’s first choice. There was a previous developer named Vaidehi. The development agreement with Vaidehi was terminated. The 3rd Respondent society then entered into a development agreement dated 29th January 2011 with the Petitioners. The Petition recites various obstacles and hurdles, including the usual public interest litigations and so on, that the 3rd Respondent society and the Petitioners faced, and then goes on to

say that the impugned order of 25th April 2016 came to be issued without any hearing. This is apparently correct. There was indeed no hearing and even today MHADA does not say that it heard the Petitioner or the 3rd Respondent society before issuing the impugned letter.

4. What it does say is that the 1st Respondent MHADA had no choice because this was a 'directive' that it received from the Government of Maharashtra in a communication dated 7th April 2016, a copy which is at Exhibit "N" at page 214-A. Now this is a communication from the private secretary of the Housing Minister of the Government of Maharashtra. He referred in this letter to some questions asked in the Legislative Assembly. On any fair reading of this 7th April 2016 communication, it is impossible to return a finding that it imposes a stay, or declares that there is one. It only points out that there were some questions in the House and then asks MHADA to make the necessary inquiries and to submit a report at the earliest.

5. Mr Lad takes me to page 214-L where a statement attributed to the Hon'ble Chief Minister is extracted. It seems that on the floor of the House, the Chief Minister reportedly said that there was a stay on the free-sale component of this project. Therefore, argues Mr Lad, the communication of 7th April 2016 must be interpreted as imposing a stay, and, resultantly, MHADA was correct in issuing the impugned communication at Exhibit "A" to the Petitioner.

6. Unfortunately there seems to be something of a synaptic failure between what was said in the Assembly, what was communicated to MHADA and what MHADA then actually did. The Government Secretary himself did not understand the proceedings in the House as imposing a stay, and quite rightly so, because the Assembly could not in the course of any debate issue a stay. All that was noted was a statement made by the Hon'ble Chief Minister.

7. This must be seen in context; and that context is this: that two persons, Premji Bhuralal Gala and Hershi Hirji Karia, purchased from Vaidehi some 37 commercial units of this free-sale component, aggregating to some 35,640 sq ft for a consideration of Rs.26 crores. *Prima facie*, this would seem to have been a purely speculative investment. The agreement between the 3rd Respondent society and Vaidehi having floundered, and Vaidehi's obligations, whatever they were, to the Gala-Karia enterprise not being taken over by the Petitioners, M/s Gala and Karia evidently found themselves facing a considerable financial loss. They attempted to intervene in this writ petition. I rejected that intervention application recently, on 8th November 2017 by a separate order on their Chamber Summons. The point is that the entire debate in the House and the questions raised emanated from M/s Gala & Karia. They have not denied this, and in the hearing of their Chamber Summons candidly said as much.

8. For this reason the Government's letter of 7th April 2016 quit correctly did not impose on that date but only calls for a report after an investigation.

9. Consequently, that MHADA chose to elevate the communication of 7th April 2016 to a full-scale 'stay' on the free-sale component is as untenable as it is incomprehensible. Context is no substitute for a wholesale abandonment of every known canon and norm of administrative and executive action. MHADA is charged with a public duty under a statute. It cannot impose a stay in this utterly ad-hoc fashion.

10. There is an Affidavit in Reply from page 219 onwards. It makes matter worse. It says that it is only on the statement attributed to the Hon'ble Chief Minister, and the communication of 7th April 2016, that MHADA stopped the Petitioner from doing further work on the free-sale component.

11. MHADA has a public duty. It knows that these projects with private participation, as a matter of policy, give an incentive to a developer. There is an affordable housing component involved. The developer constructs these units and these are allotted free of cost to eligible occupants and inhabitants; MHADA also gets a share in some case, and over and above that there is a financial premium payable by the developer. The consideration for all of these of course is the right of the developer to put up the free-sale component. What MHADA's impugned letter essentially amounts to is saying that the affordable housing for the 3rd Respondent society must be entirely subsidised by the Petitioner developer for nothing in return. Finally, that the 'stay' was imposed without any form of notice or hearing is the final nail in the coffin.

12. MHADA is not permitted to act like this. It is not some administrative mandarin allowed to act in an arbitrary manner. Whimsy and caprice are not in its charter. Expected of it is fairness in its every action, transparency, and a scrupulous adherence to the frame of the law. What is expected of MHADA is fidelity to the law, not a surfeit of loyalty.

13. It is impossible to find the slightest reason to sustain the impugned order.

14. Rule is accordingly made absolute in terms of prayer clause (a) in both petition.

15. MHADA is saved from an order of costs only because it is a public authority, and its funds are not its own.

(G. S. PATEL, J)