

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

WRIT PETITION NO. 9767 of 2016
WITH
CIVIL APPLICATION NO.1067 OF 2017
(for intervention)
IN
WRIT PETITION NO.9767 OF 2016

Mr. Sudam Maruti AtkariPetitioner

v/s.

The Municipal Commissioner
Navi Mumbai Municipal Corporation & anr.Respondents

WITH
WRIT PETITION NO. 9768 OF 2016
WITH
CIVIL APPLICATION NO.1068 OF 2017
(for intervention)
IN
WRIT PETITION NO.9768 OF 2016

Mr.Arjun Padmsingh ThakurPetitioner

v/s.

The Municipal Commissioner
Navi Mumbai Municipal Corporation & anr.Respondents

WITH
WRIT PETITION NO. 9770 OF 2016
WITH

CIVIL APPLICATION NO.1069 OF 2017
(for intervention)
IN
WRIT PETITION NO.9770 OF 2016

Mr. Arun Anandrao JagdalePetitioner
v/s.
The Municipal Commissioner
Navi Mumbai Municipal Corporation & anr.Respondents

WITH
WRIT PETITION NO.9771 OF 2016
WITH
CIVIL APPLICATION NO.1070 OF 2017
(for intervention)
IN
WRIT PETITION NO.9771 OF 2016

Mr. Ramdas Krishna RajamPetitioner
v/s.
The Municipal Commissioner
Navi Mumbai Municipal Corporation & anr.Respondents

WITH
WRIT PETITION NO.9772 OF 2016
WITH
CIVIL APPLICATION NO.1071 OF 2017
(for intervention)
IN
WRIT PETITION NO.9772 OF 2016

Mr. Sanjay Shridhar NikamPetitioner
v/s.
The Municipal Commissioner
Navi Mumbai Municipal Corporation & anr.Respondents

WITH
WRIT PETITION NO.9774 OF 2016
WITH
CIVIL APPLICATION NO.1072 OF 2017
(for intervention)
IN
WRIT PETITION NO.9774 OF 2016

Mr. Rajesh Ganpat More

....Petitioner

v/s.

The Municipal Commissioner

Navi Mumbai Municipal Corporation & anr.

....Respondents

WITH
WRIT PETITION NO.9775 OF 2016
WITH
CIVIL APPLICATION NO.1074 OF 2017
(for intervention)
IN
WRIT PETITION NO.9775 OF 2016

Mr. Devanand Mohan Shinde

....Petitioner

v/s.

The Municipal Commissioner

Navi Mumbai Municipal Corporation & anr.

....Respondents

WITH
WRIT PETITION NO. 9776 OF 2016
WITH
CIVIL APPLICATION NO.1075 OF 2017
(for intervention)
IN
WRIT PETITION NO.9776 OF 2016

Mr. Ramkishor Bansidhar Pandey ... Petitioner

V/s.

The Municipal Corporation
Navi Mumbai Municipal Corporation & anr. ... Respondents

WITH
WRIT PETITION NO.5222 OF 2017
(NOT ON BOARD)

Shraddha JN-2 Type Apartment Owners
Association ... Petitioner

v/s.

The State of Maharashtra & ors. ... Respondents

Mr.B.D.Joshi I/b. R.H.Barge for petitioners.

Mr. A.M.Kulkarni for respondent no.2 CIDCO.
Mr. S.V. Marne for respondent no.1 Corporation.
Mr. N.V.Walawalkar, Sr. Counsel a/w. Mr. Amey C. Sawant I/b.
Mr.S.M.Sabrad for the applicants in civil application/Intervenor and
for petitioner in wp 5222/17.

**CORAM : NARESH H. PATIL, ACTING C.J.
& G.S. KULKARNI, J.**

3rd October, 2018.

P.C.

We have heard the learned Counsel appearing for the parties.

2. The Corporation which is now the Planning Authority has issued notices under Section 268(1) of Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as MMC Act, 1949). Undisputedly it is submitted that earlier the subject buildings were constructed by CIDCO on the land owned by CIDCO. Thereafter, units were sold on ownership basis to individual purchasers. Accordingly lease was executed. The transactions took place under the Maharashtra Apartments Ownership Act, 1970. There were near about 22 buildings out of which the Planning Authority found that 8 buildings were earmarked as dilapidated one and they fall in C-1 category. Six buildings were already demolished. The remaining buildings are also found to be in dilapidated condition by the Corporation. The notices are already issued by the Corporation to the occupants to vacate the buildings.

3. The learned Senior Counsel Shri Walavalkar submits that out of 368 such occupants, 264 have already vacated. It seems that the occupants inter se have some dispute as to who should lead them as

an association for reconstructing the buildings by engaging a developer or reconstructing on their own. A Civil Suit came to be filed bearing No. RCS No.190/2010. By judgment and order dated 18th April, 2017 delivered by 3rd Joint Civil Judge, Junior Division, Vashi decreed the suit in following terms:-

“1) Suit is decreed with costs.

2) It is hereby declared that proposed central committee of Shraddha JN-2 apartment owners association dated 27/06/2010 formed by defendants which is not recognized by CIDCO is illegal, null and void.

3) The defendants are permanently restrained from delegating the powers and duties of the board of management of the owners association to alleged/proposed central committee.

4) The association of defendants formed under Maharashtra Apartment Ownership Act 1970, and recognized by CIDCO is however, at liberty to take all necessary decisions permissible by law about

renovation of buildings in dilapidated condition of
Shraddha JN-2 apartment owners association.”

4. The learned Senior Counsel Walavalkar submits that Association of occupants formed under the Maharashtra Apartment Ownership Act, 1970 would obtain signatures of 264 occupants which statement is disputed by Mr.Joshi appearing for petitioners on the ground that some of signature are forged and constitution of this association itself is not acceptable to a group of occupants like the petitioners. The allegations are made by the Counsel appearing for the petitioners that Association is interested in developing project, therefore, pressure is exerted on the members like the petitioners to succumb to proposal emoted by the Association of occupants which is allegedly formed under the Maharashtra Apartment Ownership Act, 1970. We are not inclined to enter into the internal disputes if any going on between the occupants one as propounded by the petitioners and another by the Intervenor for whom the learned Senior Counsel Walavalkar appears.

5. The Core question now relating to the prayer made in the petition is in respect of the notice issued by the Corporation under Section 268 of the MMC Act. The learned Counsel Mr. Mane appearing for Corporation submits that building is old and dilapidated one and has been categorized as C-1. This statement is not disputed by any of the parties appearing before us.

6. It is the responsibility of the Corporation to take necessary steps to save life and property of persons occupying such building and avoid any mishap in future which should be dangerous to the inhabitants of such buildings. The role of Corporation is, therefore, restricted to execute and take appropriate steps consequent to issuance of such notice.

7. The learned Counsel Mr. Joshi submits that in past CIDCO has granted transit accommodation to some members and the same facility must be accorded to petitioners. The learned Counsel for CIDCO submits that in the earlier policy, such transit accommodation

was provided but after the State's intervention on some of the parties' approaching it, and in view of the Corporation taking over the planning functions of the subject area, CIDCO now has no role to play. The learned Counsel, therefore, has made a clear statement that CIDCO is not the authority now to address this issue as the CIDCO has no obligation and means to accommodate the petitioners or persons like petitioners who are not joining hands with the Association, to provide for any transit accommodation.

8. Left with this situation, the only question to be addressed is as to whether the Corporation shall be permitted now to go ahead with the demolition of building consequent to issuance of notice.

9. We do not find any reason to stop the Corporation from taking any further steps subject to following appropriate procedure as prescribed in law as Corporation has already categorized the subject building as C-1.

10. The issue now remains as to re-development of these buildings. We make it clear that it is advisable for the occupants to sit together and take help of mediation and resolve the dispute amicably so that the buildings could be redeveloped in a time bound schedule.

11. If this does not materialize then the Association formed under the Maharashtra Apartment Ownership Act, 1970 in accordance with law and in accordance with mandatory provisions of the Act would submit appropriate proposal to the Planning Authorities. The learned Senior Counsel Shri Walavalkar submits that such a proposal has already been submitted. The learned Counsel Mr. Joshi submits that Annual General Meeting has been called on 16th October, 2018 where all these issues are going to be resolved. We do not express any opinion on the same.

12. With these observations Writ Petitions stand disposed of. The Civil Applications also stand disposed of accordingly.

13. Needless to mention that the Municipal Corporation shall

scrutinize the proposal submitted by the Association strictly in accordance with law.

14. The Association has also filed a Writ Petition bearing No.5222/2017 which is not on Board. In the light of the observations made above, the said Writ Petition stands disposed of.

G.S.KULKARNI, J

ACTING CHIEF JUSTICE

L.S. Panjwani, P.S.

Lata
Sunil
Panjwani

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signed by Lata
Sunil Panjwani
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