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

WRIT PETITION NO. 2485 OF 2018

Matoshri Sadan Welfare Society
and others

.... Petitioners.

V/s

State of Maharashtra and Others

..... Respondents.

Mr. Girish Godbole alongwith Mr. Kantilal H. Kanojia for the
Petitioners.

Mr. Himanshu Takke, AGP for Respondent No.1 – State.

Ms. Trupti Puranik for Respondent Nos. 2 and 3 – M.C.G.M.

Mr. Anoop U. Patil for Respondent Nos. 4 and 5.

Mr. Mayur Khandeparkar alongwith Mr. Chandrakant N. Gole for
Respondent No.6.

Mr. Pravin Samdani, Senior Counsel alongwith Mr. S.G. Surana and
Mr. Madhur Surana for Respondent No.8.

Mr. Bhushan Deshmukh alongwith Ms. Tanvi Shah I/b M/s Wadia
Ghandy & Co. for Respondent No.9.

Mr. Anil Pawar, Colony Officer, F/N Ward, present.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 4th September, 2018

P.C.:-

1] Petitioners have approached this Court praying for direction,
directing Respondent No.5 to enforce the Order dated 19/12/2017
directing Respondent No.8 to deposit Rs 16,800/- towards residential
and Rs 76,800/- towards commercial of each of the tenements being

the amount illegally deducted by Respondent No.8 from the transit rent of the Petitioners and others for their residential and commercial premises respectively.

2] Petitioners are members of Respondent No.6 – Society, which is a Society of slum dwellers. The said Society is having members who were having their slums on the land owned by Respondent No. 2 – Corporation. It appears that Respondent No.8 entered into agreement with Respondent No.6 for redevelopment of the said land. The said agreement is duly approved by Respondent No.5. It further appears that individual agreements were entered into by Respondent No.8 with individual slum dwellers including Petitioner Nos. 2 to 4. As per the agreement, certain amount of rent is payable to the members of Respondent No. 6 – Society towards alternative accommodation till completion of the project.

3] It is the contention of the Petitioners that Respondent No.8 has not paid the rent amount for a long period, thereby resulting in huge arrears of rent.

4] In response to the notice issued by this Court, Respondent Nos. 6 and 8 have filed their reply. According to Respondent No.8, it has received communication from Respondent No.2 – Corporation pointing out therein the various amounts payable by individual members of

Respondent No.6 – Society towards compensation for user of the land belonging to Respondent No.2 – Corporation. According to Respondent No.8, Respondent No.6 has intimated to it that the amount, as demanded by the Corporation against each of the members, be paid by Respondent No.8 and the same may be adjusted from the rent which was payable to the individual members. It is submitted that, accordingly, Respondent No.8 has paid an amount in case of 93 members and was in the process of paying the said amount in case of other members. Insofar as Petitioners are concerned, it is stated that the amount has been paid in respect of Petitioner Nos. 2 and 3 and is yet to be paid in respect of Petitioner No.4.

5] An affidavit-in-reply is also filed on behalf of Respondent No. 6 – Society. In the affidavit-in-reply, it is stated that Respondent No.6 had taken a decision to deduct the amount from the rent receivable by each of the members and Respondent No.8 was requested to pay the said amount to the Municipal Corporation. It is stated in the affidavit that this was done so, since Respondent No.6 found that non-payment of dues of the Corporation may result in rehabilitation scheme coming in difficulty. When the matter was called out in the morning session, we had put a pertinent query to the learned senior Counsel Mr. Samdani appearing on behalf of Respondent No.8, as to whether the amount, as agreed, after deduction of the dues of the Corporation, was, in fact, paid to the members or not. We also asked him to file an

affidavit of the authorised person, representing Respondent No.8.

6] Accordingly, an affidavit dated 4/09/2018 is filed by one Mr. Ishwarlal M. Lakhara, Director of Respondent No.8 herein. It will be relevant to reproduce the following paragraphs from the said affidavit.

“2) I say that Respondent No.8 has paid rent to all eligible occupants at the rate as agreed in Individual Agreement entered into between Respondent No.8 and such Individual member of Respondent No.6.”

“3) I further say that as per Letter dated 28/6/2016 issued by Respondent No.3, the Respondent No.8 has deducted certain amount from rent due & payable of such member of Respondent No.6 and paid remaining amount as rent to such Individual Eligible Occupant / Member of Respondent No.6 society as and when rent was and is due & payable to Individual eligible slum dweller.”

“4) I further say that I will pay rent regularly at same rate to such eligible Occupant / Member of Respondent No.6 regularly as and when due & payable by Respondent No.8 as per Individual Agreement entered into between such

Individual Occupant / Member of Respondent No.6 and Respondent No.8. I further say that I will deposit / remit to such eligible member of Respondent No.6 if any amount due & payable after deducting amount claimed by Respondent No.3 as per Notice dated 28/6/2016.”

7] From the material placed on record, it would reveal that Respondent No.6 itself has stated that the amount payable to the Corporation was to be paid by Respondent No.8, so that redevelopment does not come in difficulty. It is further stated that the amount so paid to the Corporation shall be deducted from the rent payable to each of the members. We find that the decision taken by Respondent No.6 and implemented by Respondent No.8 cannot be said to be against the interest of redevelopment. On the contrary, the same is in the interest of redevelopment scheme. Insofar as other aspect with regard to payment of rent after deduction of dues of the Corporation is concerned, we find that the affidavit filed by Mr. Ishwarlal M. Lakhara sufficiently takes care of the said concern.

8] Mr. Samdani, learned Senior Counsel appearing on behalf of Respondent No.8, further states that in order to do away with the apprehension of the Petitioners, Respondent No.8 is willing to verify the record and if it is found that any of the amount is due to any of the

members of Respondent No.6 -Society, the payment will be made within a period of four weeks from today.

9] In this view of the matter, Petition is disposed of by taking on record the statement made in the affidavit of Mr. Ishwarlal M. Lakhara.

(M.S. KARNIK, J.)

(B. R. GAVAI, J.)