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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1821 OF 2018

United Tambawala Welfare Association ... Petitioners
 and 48 Ors.

vs.

The State of Maharashtra through ... Respondents
 Urban Planning Department and 9 Ors.

Mr. Atul Singh for the Petitioner.

Ms. Pooja Yadav for Respondent no. 4.

Dr. Birendra Saraf a/w. Ms. Kausar Banatwala ib. Mr. Tushar Goradia for
 Respondent nos. 6 to 9.

Mr. P. G. Lad a/w. Mrs. Sayali Apte for MHADA – Respondent nos. 2 and 3.

Mr. Mayuresh Khandeparkar ib. Mr. Suryakant Pise for Respondent no. 10.

Ms. Deepali Patankar, AGP for Respondent / State.

CORAM : A.K. MENON, J.

DATE : 3rd OCTOBER, 2018

P.C.

1. By this Writ Petition the petitioners challenge an order dated 10th May, 2018 passed by the Chief Officer, Mumbai Building Repairs and Reconstruction Board, a MHADA Unit under section 95(A) of the MHADA Act, 1976. The facts in brief leading up to the present challenge are as under :

2. The petitioner is an association of occupants of premises in building known as Tambawala Building which is a ground plus two storeyed, brick walled structure with a sloping tiled roof located at Mazgaon, Mumbai. Petitioner nos. 2 to 48 are

stated to be occupants representing 47 of 105 tenants and comprising 44.76% of residential and other commercial premises. The petition is filed apparently in accordance with a decision taken in meeting in 26th May, 2018 alleging high handed and illegal action of the developer and the committee members of respondent no. 10 which is the proposed society.

3. By the impugned order MHADA has found the conduct of the petitioners non-co-operative. It was held that NOC holder namely respondent no. 6 – Sumer Buildcorp Pvt. Ltd. is rehabilitating tenants/occupants by providing carpet area of 490 sq.ft and 590 sq.ft which is more than their entitlement under DCR 33(7) of the MHADA Act. The impugned order records that the developers are ready to comply with provisions of the law as per plans approved by the Municipal Corporation and that the developers had already executed agreements with 48 tenants 18 of which are registered as agreements of permanent alternate accommodation. Apparently some supplementary agreements are also executed.

4. The impugned order records that the developer had agreed to provide 25% additional area on the ground floor for non residential tenants and pay rent in lieu of transit accommodation ranging from Rs.22,000/- and Rs.27,000/- per tenant, depending on the size of the premises in their occupation. Furthermore temporary alternate accommodation was also contemplated. A sum of Rs.1.30 crores is proposed to be given to the proposed society as a corpus fund to ensure that the premises is maintenance free for some time.

5. Mr. Singh, learned counsel for the petitioner submitted that vide the Memorandum of Understanding (MOU) entered into on 2nd July, 2009 by and between respondent no. 6 and 10, the owner/respondent no.6 was to redevelop the property and tenants had given individual consents as contemplated under section 33(7) of the Development Control Rules and as per provisions of the MHADA Act.

6. Mr. Singh further urged that under clause "BA" the area of occupation and amenities to be provided were listed and each tenant member executing individual agreement was to be provided with an enhanced area. Particulars of these were provided in clause BA(iii). Clause (C) provided for the obligation, performance, responsibility and duty of the tenant members towards owners/landlords. Mr. Singh submitted that the occupants including the petitioners had given irrevocable consents per Annexure I, a specimen copy of which is at Exhibit D to the petition.

7. He invited my attention to the fact that the tenants had undertaken to shift if found necessary to temporary accommodation made available in the same site as the occupant property and that the occupant would vacate and hand over peaceful possession of the transit accommodation after getting possession of the new premises. The fact that consents were obtained is not in dispute. MHADA has therefore issued no objection certificate dated 4th June, 2010 along with an attached list of certified tenants in the usual form providing for compliance with all requirements. It is said to include the necessary protections that the tenants / occupants are entitled to.

8. The only challenge that was canvassed by Mr. Singh on behalf of the applicant was to the effect that the respondent no. 6 is now seeking to resile from its obligations and that respondent no. 7 and 8 are representing the promoters are claiming rights to developing the property through respondent no. 9. He submitted that the new arrangement is not transparent and respondent no. 10 was not acting in the interest of petitioner nos. 2 to 48 who have therefore formed a new Association.

9. According to Mr. Singh the building is in a repairable condition and not dilapidated and does not call for redevelopment under section DCR 33(7). He submitted that 51 tenants had forwarded a structural report to respondent no. 6 which states that the building is repairable. According to Mr. Singh developers are obliged to provide transit accommodation in the very same property and the occupant are required to shift to such transit accommodation only after the transit accommodation was made ready. He submitted that some agreements were entered into between respondent no. 6 and some of the occupants specimen copy of which is at Exhibit -C . That in contrary to the understanding between the parties and irrevocable consents given by the petitioners, the respondents are now attempting to resile from their obligations. Some of the applicants have cancelled their consents for various reasons. He submitted that the impugned order has not considered these aspects. It is therefore submitted that the impugned order is bad in law fails to take into account the agreement between the parties. He therefore submitted that the order is liable to be set aside.

10. Dr. Saraf on behalf of the respondent opposed the petition stating that the petitioners are engaging in arm twisting tactics that the petitioners were all part of the proposed society which had initially entered into the MOU. He submitted that the respondents are willing to proceed in accordance with the MOU and that development is being undertaken as per NOC granted by MHADA. He invited my attention to the list of tenants /occupants annexed to the NOC dated 4th June, 2010 which annexure is not filed along with the petition and submitted that perusal of the enclosure reveals that the list of certified tenants include 100 tenants all of whom were therefore entitled to carpet area/ built up area as specifically verified and certified. He therefore submitted that construction is bound to be carried out entirely in accordance with law and the present attempt is to arm twist the developers to offer further benefits and in the guise of alleging violation of the agreement, the petitioners are merely preventing the project from progressing.

11. Dr Saraf submitted that the various objections now raised were baseless and submitted that the impugned order had considered all aspects. Dr. Saraf submitted that by virtue of the irrevocable consents the tenants were required to move to temporary or transit accommodation on the same site or elsewhere. He invited my attention to clause no. (5) which reads as under :

5. *"If necessary I hereby undertake to shift if found necessary, to the temporary transit accommodation made available on the same site or elsewhere by the said developers on the captioned property."*

He submitted that the undertaking also contemplated shifting to some other place apart from the same site and therefore the respondent/developer was not obliged to construct transit accommodation on the same site. Mr. Singh however countered this by contending that clause 5 contemplated moving to transit accommodation at the same site or elsewhere on the captioned property. (*Emphasis supplied*). Dr Saraf submitted that in view of this grievance of the petitioners as to the location of the transit accommodation, the respondents are willing to construct transit accommodation on the very site, thereafter construct the new building and offer permanent alternate accommodation in the new building after which the respondent would vacate their premises. In such event the developers would provide alternate accommodation of the same area as now occupied by the petitioners and no rent will be payable. Faced with this offer Mr. Singh on instructions submitted that the petitioners were unable to agree. Mr. Singh then submitted that in any event the consents had been withdrawn and petitioners are not bound by the consents.

12. I have heard learned counsel at length and perused the impugned order which has dealt with numerous contentions while contemplating action under section 95(A). It records that 48 tenants have executed agreements and 57 are not ready to co-operate and are reluctant to execute agreement of permanent alternate accommodation. The order records that all other requirements such as alternate arrangement for temporary alternate accommodation are being provided. Rent has also been provided for.

13. It is not the case of Mr. Singh that the objections raised before this Court were argued before the authority and were not considered. He inter alia submitted that the consents had been cancelled and furthermore rent for alternate accommodation has not been offered in a fair and transparent manner. These aspects in my view have been already dealt with in the impugned order. The impugned order clearly records that the tenants are being provided premises which are larger than what is in their occupation, rent has also been offered ranging from Rs.22,000/- and Rs. 27,000/- per month. The occupants who are ready to vacate may provided temporary accommodation in the vicinity as may be available instead of being paid rent.

14. The impugned order records that the objection raised by the petitioner is beyond the scope of section 95(A) of the MHADA Act. In this respect and as rightly pointed out by Dr. Saraf the scope of section 95(A) has been dealt with in the division bench of this Court in matter of *Mrs. Radhika George & Ors. vs. Maharashtra Housing and Area Development Authority & Ors*¹ wherein this Court has observed that the issue to be considered is whether 70% had given their consent. In this respect it is admitted in the present case that all 105 members had given their consent. 43 tenants had vacated their premises of whom 28 had executed agreement of permanent alternate accommodation. In view of this position the Executive Engineer submitted a proposal to take up these proceedings under section 95(A). I do not find any perversity in the impugned order.

¹ 2012(4) ALL MR 918

15. The fact that the petition is motivated becomes all the more evident from the fact that the petitioners have declined to accept the premises of the same area which is all that they are entitled to under the scheme. More so because they need to vacate only after transit accommodation was constructed on the very property. The concerned applicants who had given their consents now appear to be having second thoughts and have raised frivolous contentions.

16. The petitioner have failed to accept the respondents offer to provide temporary alternate accommodation in accordance with the original agreement and has required the petitioner on the same site. They need to vacate their existing premises only after transit accommodation is made available and vacate transit accommodation only after construction of the new building to house permanent accommodation but in respect of the same area that is presently occupied by them and as set out in the NOC by MHADA. On one hand petitioners contend that building is in repairable condition and that a structural report has supported their view. If that were so, it is not understood why the petitioners had conveyed their consent in the first instance. Furthermore the cancellation of the consent is seen to be in the form of a letter on stamp paper addressed to MHADA and only as of December 2017. This letter does not specify that the consent is being cancelled since building is repairable.

17. The petitioners' case was put to test when an offer was made by the developer to proceed exactly in accordance with the MHADA consent providing temporary accommodation on the captioned property. Thus when a solution was

offered to the very issue that the petitioners had urged as their main plank of the challenge, they declined to accept the offer. The fact that the petitioners grievances are not bonafide is evident from the fact that they refuse to act in accordance with the MHADA consent and accept permanent alternate accommodation of the same area upon being provided with transit accommodation on the very same property. I therefore find no reason to interfere with this order in the writ jurisdiction of this court. Accordingly, I pass the following order :

- (i) Writ Petition dismissed.
- (ii) No costs.

At this stage Mr. Singh, learned counsel requests for continuation of ad-interim protection granted vide order dated 7th June, 2018. Ad-interim protection granted earlier shall continue for a period of four weeks from today.

(A. K. MENON, J.)

Rajeshwari
Ramesh
Pillai

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by Rajeshwari
Ramesh Pillai
Date:
2018.10.05
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