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

WRIT PETITION (L) NO.2674 OF 2018

M/s. Sai Pooja Developers	..Petitioner
Versus	
State of Maharashtra and others	..Respondents

Ms. Neeta Jain a/w Ms. Aanal Desai I/by M/s. Lex Services, Advocate for the Petitioner.

Mr. Kunal Bhanage, AGP for Respondent Nos.1 & 6 – State.

Ms. Trupti Puranik, Advocate for Respondent No.2 – MCGM.

Mr. T. D. Deshmukh, Advocate for Respondent Nos.3 & 4.

Mr. P. K. Dhakephalkar, Senior Counsel a/w Mr. Sameer R. Bhalekar, Advocate for Respondent No.5.

Mr. V. R. Walavalkar I/by Mr. Mohan Dhuri, Advocate for Respondent No.7.

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

DATE: 11th OCTOBER, 2018

P.C.:-

1] Petitioner has approached this Court seeking various reliefs, including the one for directing Respondent Nos. 3 and 4 to cancel the offer letter dated 09/05/2017 issued to Respondent No.7. Petitioner

also seeks direction to Respondent Nos. 3 and 4 to decide whether irrevocable consents issued by members of Respondent No.5 - Society can be revoked. The another prayer that is made is for an order of injunction, restraining Respondent Nos. 2 to 5 and 7 from in any manner acting in furtherance of the offer dated 09/05/2017.

2] Heard Ms. Neeta Jain, learned Counsel appearing on behalf of the Petitioner, Mr. Dhakephalkar, learned Senior Counsel appearing on behalf of Respondent No.5 and Mr. Deshmukh, learned Counsel appearing on behalf of Respondent Nos. 3 and 4.

3] Learned Counsel appearing on behalf of the Petitioner submits that in view of agreement entered into between the Petitioner and Respondent No.5, the irrevocable consents which were given by Respondent No.5 in favour of the Petitioner could not have been revoked in view of Clause 11 of the Agreement dated 10/11/2010. She submits that the work which was allotted to the Petitioner by Respondent No.5 could not be continued in view of non-availability of certain permissions from the MCGM, MHADA etc.

4] Perusal of the record would reveal that, initially, Respondent No.5, which is a Society, had entered into an agreement with the present Petitioner for redevelopment of its property. However, it appears that Respondent No.5 – Society, since was of the view that there were various defaults on the part of the present Petitioner, terminated the agreement which was entered into between the Petitioner and Respondent No.5. It appears that while terminating the contract between the Petitioner and Respondent No.5 vide notice dated 13/07/2013, Respondent No.5 had called upon the Petitioner to do various compliances. It appears that it is the case of Respondent No.5 – Society that since the Petitioner did not comply with the said compliances sought vide notice dated 13/07/2013, it terminated the contract.

5] Mr. Dhakephalkar, learned Senior Counsel appearing on behalf of Respondent No.5, submits that after terminating the said contract with the Petitioner, Respondent No.5 - Society has, by requisite majority, decided to appoint Respondent No.7 as its developer and an

agreement is entered into between Respondent No.5 and Respondent No.7 on 01/10/2017. Respondent/MHADA has also issued offer letter to Respondent No.7 on 09/05/2017.

6] It appears that in pursuance to the said agreement dated 1/10/2017, all the 100 members of Respondent No.5 – Society have vacated their premises so as to enable Respondent No.7 to proceed further with redevelopment.

7] It could thus be seen that, what in effect the Petitioner claims to seek by way of present Petition is an enforcement of contract between the Petitioner and Respondent No. 5 – Society. We find that such a relief cannot be granted unless this Court adjudicates on various questions of law and fact. Such questions of law and fact cannot be decided by this Court in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, unless the parties lead evidence in that behalf and prove their rival contentions.

8] We are therefore of the considered view that the present

Petition would not be tenable in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. If Petitioner has any claim against Respondent No.5 or any other Respondents, appropriate remedy would be to file suit for damages and/or compensation etc.

9] In that view of the matter, Petition is rejected.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)