

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

WRIT PETITION NO.351 OF 2017

Labh Shubh Properties Pvt. Ltd. ...Petitioners
Versus
Maharashtra Housing and Area
Development Authority and Ors. ...Respondents

.....

Mr. R.D. Soni i/b. Mr. A.R. Shaikh for the Petitioner.
Mr. Maish Upadhye, AGP for the Respondent -State.
Mr. V.P. Sawant with Mr. P.M. Jadhav for the Respondent Nos.1 and 2.
Mr. Mahendra Ghelani i/b. M/s. Law Charter for the Respondent Nos.3
and 4.

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**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 26th JUNE, 2018.

P.C.:-

Heard the learned counsels appearing for the respective parties.

2. By this petition, the petitioner has sought following reliefs:-

“a. Rule be issued the record and proceedings may be called from the office of the Respondent No.2 in respect of the impugned demolition order dated 14.10.2016 and after perusal of its legality and propriety, this Hon'ble Court may be pleased to quash and set aside the Impugned Order at Exhibit “A” dated 14.10.2016 annexed to the Petition.

b. This Hon'ble Court may be pleased to issue writ of mandamus, ordering and directing the Respondent No.2 to remove themselves from the Petitioners Plots

No.T-1 and T-6 with further direction to restore the demolish structures as standing on the said plots of land on 27.10.2016.

c. In the alternate, this Hon'ble Court may be pleased to allow the Petitioners to reconstruct the demolished structure, demolished by Respondent No.3 on Plot No.T-1, T-6/1 to 4 as per the sanctioned plans of the year 2005 and CC dated 31.08.2005.”

3. The learned counsel for the Respondent Nos.3 and 4 at the outset challenges locus of the Petitioner to seek relief mentioned hereinabove.

4. In order to understand the controversy in the matter it would be necessary to make a brief reference to the background of the matter. The Respondent No.1-MHADA is the owner of the land under CTS No.837 to 840 at Survey Nos.55 and 56 situated at village-Poisur, Kandivali (E). In the year 1979 the Respondent No.1-MHADA formulated a housing scheme for 2724 tenements and allotted it to the persons belonging to the various categories. The said persons, who were from 65 independent societies of MHADA thereafter executed conveyance of the buildings of the said plot in favour of the said societies, which in turn formed a federal society i.e. Respondent No.4-Samta Nagar Co-operative Housing Societies Union Ltd.

5. In the year 1996 the Respondent No.4-Samta Nagar Cooperative Society Union Ltd. decided to redevelop the said land and the buildings and accordingly appointed Respondent No.5-M/s. Truly Creative Developers Pvt. Ltd. for the purpose of redevelopment of the said land and the buildings. The Respondent No.5 initially commenced redevelopment work. However, he could not carry on the work due to finance constraints. Hence, the Respondent No.5 entered into a joint venture agreement dated 17th April, 2005 with the Petitioner. Under the said joint venture agreement, it was agreed that the Respondent No.5 would construct rehab buildings with the financial assistance provided by the Petitioner. The Petitioner was to construct sale component of the development project and the financial assistance so provided to the Respondent No.5 for constructing rehab buildings was adjusted against the share of the Respondent No.5 from the sale component.

6. The Petitioner claims that in terms of the joint venture agreement, as per the letter issued by the Respondent No.4-Union, the Respondent No.5 handed over to him five plots bearing Plot Nos.T1 and T6/ 1 to 4 admeasuring 3619 sq. mt. for construction of buildings. The Petitioner thereafter started construction work on the said plots.

After the commencement of the construction work the MCGM issued notices and called upon the Respondent No.4- Samta Nagar Cooperative Society Union Ltd to submit NOC, failing which commencement certificate would stand revoked. The Respondent No.1 also issued stop work notice and imposed penalty on the Respondent No.4-Samta Nagar Cooperative Society Union Ltd for non payment of premium and further issued demolition notices for the unauthorized constructions constructed by the Respondent No.5. The Petitioner had challenged the said notices in Writ Petition No.2197 of 2006. The Petitioner withdrew the said petition since the notices were issued in the matter of the Respondent No.4-Samta Nagar Cooperative Society Union Ltd. Subsequently, the Respondent No.4- Samta Nagar Cooperative Society Union Ltd filed Writ Petition No.2187 of 2006, which was disposed of with direction to the Respondent No.1 to consider the representation of the Respondent No.4- Samta Nagar Cooperative Society Union Ltd for issuance of further NOC.

7. The Petitioner claims that taking advantage of stop work notice, the Respondent No.5 terminated the joint venture agreement, which led to arbitration proceedings. The Petitioner further claims that by notice dated 7th January, 2017 the Respondent No.4- Samta Nagar

Cooperative Society Union Ltd terminated the development agreement with the Respondent No.5 and appointed the Respondent No.3 as the new developer. The Respondent No.4- Samta Nagar Cooperative Society Union Ltd has also paid premium as well as the penalty as demanded by the Respondent No.1-MHADA. The Petitioner claims that he is in possession of the said plots despite which by the impugned order dated 14th October, 2016 the Respondent No.2 allowed the Respondent No.3 to demolish the construction on Plot Nos.T1 and T6/ 1 to 4 as well as building Nos., 2, 19,20,21 and 26. Aggrieved by this action, the Petitioner has filed this petition for the reliefs reproduced hereinabove.

8. The impugned order dated 14th October, 2016 was passed on the representation made by the Developer. The operative part of the said order reads thus:-

“2. That, apart from the occupiers in the unauthorized buildings entitled for free of cost accommodation as per clause 1 above, if any other occupier is claiming that he has made payment to the earlier developer, they are free to file appropriate proceedings against the earlier developer. MHADA has no role in this respect.

3. That, to provide temporary/permanent tenements to the original members of the society and also to unauthorized occupants of the structures (as per clause 1

above) which are standing and declared as unauthorized by the MCGM will be the responsibility of the Union and new Developer M/s. S.D. Corporation Pvt. Ltd. and the Union/Developer and all the concerned authorities shall take cognizance of the same for the implementation of the redevelopment scheme.

4. The Developer shall demolish the unauthorized incomplete buildings as per their requirement for construction and the members and occupiers shall co-operate with the Union/Developer for the same. In the event of non-cooperation by any of the occupants, the Union/Developer shall be entitled to initiate action as per Section 95A of MHADA Act.

5. Accordingly, Union/Developer is permitted to take further steps to demolish the unauthorized construction as mentioned in the reports prepared by the Ex.Engineer, Borivali Division and annexed hereinabove and to include the land in the integrated redevelopment. In this respect, however, if any adverse claim arises, the responsibility of the same will lie with the Union /Developer.”

9. On going through the records, we find that the Petitioner was not appointed as a Developer either by the Respondent No.1 or by the Respondent No.4-Samta Nagar Cooperative Society Union Ltd. There is thus, no privity of contract between the Petitioner and the Respondent No.4 and the Respondent No.1-MHADA. The agreement was between the Petitioner and the Respondent No.5 and the dispute is essentially between the Petitioner and the erstwhile Developer i.e. Respondent No.5. There being no privity of contract between the

Petitioner and the Respondent Nos.1 to 4, the Petitioner cannot seek any relief as against these Respondents. We are therefore of the view that the Petitioner has no locus to file this Petition and to seek the reliefs as stated above.

10. In the light of above, the petition is devoid of any merits and is accordingly dismissed.

11. Mr. Soni, the learned counsel for the Petitioner, at this stage seeks continuance of interim order granted earlier. In view of the reasons given hereinabove, we are not inclined to continue the interim order. Hence, the request is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)