

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

WRIT PETITION (L) NO. 985 OF 2019

Ashwini D. Monga & Ors.

...Petitioners

vs

The State of Maharashtra & Ors.

...Respondents

Mr.Shishir Joshi with Priti Joshi and Shreegeeta Rai I/b. V.S. Legal Associates for Petitioners.

Mr.Sukanta Karmakar, AGP for Respondent No.1.

Mr.Sharmila Deshmukh for Respondent Nos.2 and 3.

Dr.Milind Sathe, Senior Advocate with Arif Doctor, Anirudh Hariani, Arun Diwach, Vinamra Kopariha and Prachi Vasudeo I/b. Cyril Amarchand Mangaldas for Respondent No.4.

CORAM : S.C.GUPTE, J.

DATE : 26 MARCH 2019

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an eviction order passed by Respondent No.3, Executive Engineer of Mumbai Building Repairs and Reconstruction Board, under Section 95-A of Maharashtra Housing and Area Development Act, 1976. The ground of challenge is two fold. Firstly, it is submitted that there was no compliance with the principles of natural justice when the order of eviction was passed. It is submitted that the Petitioners, who were noticees under Section 95-A, had filed a reply to the notice seeking in particular various documents from MHADA. Learned Counsel submits that these documents had an important bearing on the power or authority of the Executive Engineer to issue a notice under Section 95-A, in the first place, and decide the same. Learned Counsel

submits that these documents were not furnished to the Petitioners. Secondly, it is submitted that the notice was issued purportedly on the basis of an NOC granted by MHADA to Respondent No.4 developer to develop and reconstruct the property and extensions granted to that NOC from time to time. Learned Counsel submits that the NOC and its extensions have been granted illegally. It is submitted that on the basis of such NOC and extensions, the authority had no power or authority to issue any notice under Section 95-A for evicting the Petitioners.

3 So far as the grievance of non-furnishing of documents called for is concerned, it is pertinent to note that the eviction notices were issued under Section 95-A to a number of occupants including the Petitioners herein. The advocate representing the Petitioners in the present petition was also representing some other occupants on whose behalf a separate petition was filed in this court and which was incidentally withdrawn when it came up for admission. The NOC granted by MHADA and its various extensions were made available to the advocate in that other matter. These documents are even annexed to the present petition. The real grievance is that the basis of MHADA issuing the NOC and its extensions is not disclosed to the Petitioners. This court considered the scope of an inquiry by the competent authority under Section 95-A of the Act in the case of **Radhika George vs. Maharashtra Housing and Area Development Authority**¹. The court held that the object of the legislature in introducing the amendments to the Act including Section 95-A was to give an opportunity to the occupants of old structures who were unable to develop for lack of resources to move to better accommodation and at the same

¹ Appeal (L) No.359/2012 decided on 4.7.2012

time create additional housing for general consumption. Section 95-A was enacted to enable speedy implementation of such redevelopment schemes. When the housing societies decide to get their premises redeveloped, care should be taken that members should have premises to stay when the original building is demolished and is being reconstructed. The members should not be left in the lurch while redevelopment goes on at its own pace. Thus, our court held, what the authority needs to examine whilst passing an order under Section 95-A is (i) whether it is a collective decision, i.e. 70% of members have consented to it; (ii) whether permissions like NOC are in place and (iii) whether the developer has provided adequate transit accommodation. Once the authority under Section 95-A finds that these requirements are fulfilled, all that it does is to direct the members to shift to the transit accommodation whilst awaiting reconstruction. Any action under Section 95-A, thus, does not result in determining rights of the parties *per se*. The provision is not intended to provide a forum for adjudication of *inter se* disputes between the society, its members and the developer. These disputes would have to be necessarily adjudicated in a competent court of law. The proceedings under Section 95-A, thus, cannot be converted into a full-fledged judicial proceeding as if the authority were trying a civil suit.

4 It is not in dispute that in the present case, 70% members have given their consent to the proposal of redevelopment through Respondent No.4 developer. It is also not in dispute that the permissions of MHADA, including the NOC and its extensions upto date, are in place, that is to say, these sanctions and extensions do subsist as of today. So also, it is not in dispute that the developer is providing adequate transit accommodation to

the displaced occupants of the society. Since these requirements, which are the only requirements to be considered when an application for vacating an occupant is made under Section 95-A, have been duly fulfilled, there is nothing for the authority to further consider under section 95-A and the eviction order passed by the authority is not amenable to any challenge before this court.

5 If the Petitioners have any grievance about the legality of the NOC issued by MHADA or any of its extensions granted by MHADA, surely the competent authority deciding an application under Section 95-A has no authority to decide these questions. These have to be addressed to a competent court of law before which the legality of MHADA's actions can be challenged.

6 There is accordingly no merit in the writ petition. The writ petition is dismissed.

7 Since it will take some time before the order is uploaded on the website, MHADA is directed not to take steps for eviction of the Petitioners for a period of one week from today.

(S.C. GUPTE, J.)