

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION / O.O.C.J.**

WRIT PETITION NO.3092 OF 2018

Gandhi Niwas Co-operative Housing Society
Ltd.

... Petitioner

Vs

The State of Maharashtra & ors.

... Respondents

Mr.Aditya Pimple with Ms.Shivani Soni & Ms.Nihari Mehta i/b
Deven Dwarkadas for the Petitioner.

Mr.Hemant Takke for the Respondent / State.

Ms.M.S. Jagtap for Resp. No.3.

Ms.Sheetal Metakari for Resp. Nos.4 to 6.

Mr.Deepak Shukla i/b B.N. Shukla for Resp. Nos.8 to 10.

Mr.S.N. Bulbule for Resp. No.11.

Mr.Ashok Gupta, Respondent No.9 & partner of Resp. No.8 –
present.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 3, 2019

P.C.:

1. This Writ Petition is filed by the Petitioner for the following
reliefs:

“a. That this Hon’ble Court be pleased to issue a Writ of mandamus or a Writ in the nature of mandamus or any appropriate writ, order or direction under Article 226 of the Constitution of India direction the Respondent Nos.1 to 6 and 8 to 12, their officers, servants, subordinates, agents and/or successors in office to produce the relevant papers and proceedings of the said development file of Petitioner and all other relevant papers and after examining the same to forthwith:

i. cancel I.O.D. issued on 11.03.2014 Commencement Certificate issued on 25.08.2011.

ii. cancel all other permissions/approvals and nullify all processes under the said Development Agreement dated 26th October, 2010 granted by Respondent No.2 to 7 with respect to the said Property described in Schedule Exhibit.

b. This Hon’ble Court be pleased to issue Writ of Prohibition or such other appropriate Writ order or direction calling upon Respondent Nos.1 to 7 not to grant any fresh approval including Commencement Certificate not to renew the IOD or Commencement Certificate and cancel all the permissions and approvals in favor of the Respondent Nos.8 to 11 related to the redevelopment of the said Property described in Schedule Exhibit “C” hereto.

c. This Hon’ble Court be pleased to direct (Co-operative Registrar) to take note of the aforesaid facts including cancellation of Development Agreement.

d. This Hon’ble Court may appoint a new Developer for redeveloping or the said Property described in Schedule Exhibit – C hereto or appoint a new Developer by appointment of a Commissioner and following due process of law as per the terms of reference that may be decided by Hon’ble Court.”

The Petitioner has also prayed for an interim relief as under:

“e. Pending determination of present Petition, the Hon’ble Court may issue direction to Respondent Nos.2 to 7 herein restraining them not to issue/grant any further permission / approval to Respondent Nos.8 to 11 or any of them with respect to the said Property described in schedule Exhibit – C.”

2. It is submitted by the learned Counsel for the Petitioner that the Development agreement is entered into by and between the society and the Developer as far back as on 26.10.2010 and except for obtaining the Commencement Certificate in the year 2011 and an IOD in 2014, the Developer has not taken any steps to develop the property because of which the members of the Petitioner society are constrained to use the buildings which are in dilapidated state. The society has written letters to the authority setting out the conduct of the Developer and requesting the authority not to issue a fresh Commencement Certificate/IOD or grant any other permission concerning the development since the agreement with the Developer is terminated by letters dated 11.7.2016, 16.6.2017 and 1.9.2017. The said termination order is not challenged by Respondent Nos.8 to 11.

3. On 26th June, 2019, the Petitioner approached this Court for urgent ad-interim reliefs on the ground that the Petitioner

apprehends that despite the termination of the Development agreement, Respondent No.8 may approach the authorities and seek fresh permission/s or renewal of permission/s granted earlier pertaining to the redevelopment of the Petitioner's property. On that day, Respondent No.9, partner of Respondent No.8, was present in Court. He admitted that Respondent No.8 has not challenged the termination of the agreement dated 26.10.2010. He further admitted that he has not applied for or obtained any approvals/permissions from any authority after the earlier permissions have lapsed. In view thereof, the matter was directed to be placed for final hearing today and in the meantime, Respondent Nos.8 to 11 (Developers) were directed not to make any application to any statutory authority seeking any fresh permission for development of the project which is the subject matter of this petition. The authorities were also directed not to grant any permission to the Developer in respect of the said project.

4. The Developers have changed their earlier Advocate and have today appointed Advocate B.N. Shukla to represent them in the matter. Advocate Deepak Shukla instructed by B.N. Shukla for

the Developer has today submitted that the Petitioner has in the Writ Petition not mentioned that it is the Developer who in the year 2014 obtained the Deed of Conveyance in respect of the property owned by the society and that the members of the society also sought changes in the terms and conditions agreed upon in the original development agreement executed in the year 2010.

5. These submissions will not render any assistance to the Developer since the Developers even as on date, admit that the agreement executed by and between the society and the Developer has been terminated by 3 letters dated 11.7.2016, 16.6.2017 and 1.9.2017, and that the Developers have till date not challenged the termination. In view thereof, the Developers are certainly not entitled to either proceed with the development or apply for fresh approvals / permissions from any authority for the purpose of proceeding with the development of the project. In answer to this, the advocate for the Developer would submit that he is in the process of challenging the termination letters received by the Developer from the society in the years 2016-2017. Of course, the Developer is free to challenge the termination of the Agreement dated 26.10.2010. which as and when challenged will

be decided on its own merits. However, in the meantime, the above petition will have to be allowed by directing the Developers not to proceed with the Development or to apply for any fresh permission or renewal of earlier permissions qua the redevelopment of the property of the Petitioner-Society. The authorities too will have to be directed not to entertain any Application of the Developers pertaining to the redevelopment of the property of the Petitioner-Society. Under the circumstances, the following order is passed:

- i) The Developer is directed not to file any application before any statutory authority seeking any permission qua the redevelopment of property belonging to the Petitioner-Society which is the subject matter of the present Petition until any favourable order is passed in the proceeding/s proposed to be filed by the Developer challenging the termination of the Agreement dated 26.10.2010.
- ii) The Respondent authorities shall also not grant any permission/s to the Developers for redevelopment of the property belonging to the Petitioner Society unless any order is passed in favour of the Developers in the proceedings

proposed to be filed by them, challenging the termination of the Agreement dated 26.10.2010.

iii) Since this Court has not gone into the merits of the termination, any challenge by the Developers to the termination letters dated 11.7.2016, 16.6.2107 and 1.9.2017 issued by the Petitioner shall be decided on its own merits.

6. The above Writ Petition is accordingly disposed off.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)