

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

**REVIEW PETITION NO.17 OF 2019
IN
NOTICE OF MOTION NO.563 OF 2019
IN
SUIT NO.966 OF 1982**

A. H. Wadia Trust

.... Petitioner

versus

Kurla Nagarik Sahakari Bank Limited & Ors. Respondents

.....

- Mr. Sharan Jagtiani a/w. Levi Rubens, Sushant Arora, Sheetal Mote and Surbhi Agrawal i/b. Vigil Juris, for the Petitioner.
- Mr. R. R. Varma, for Respondent Nos.1 to 14.
- Mr. D. N. Kher, Court Receiver present
- Mr. N. A. Bandodkar, IInd Assistant to Court Receiver present.

CORAM:

R. I. CHAGLA J.

DATE :

14th NOVEMBER, 2019

P.C. :

The Review Petitioner by this review petition seeks review of the order dated 20/9/2019 passed by this Court in Notice of Motion No.563/2019 in Suit No.966/1982.

2. A brief background of facts leading to the passing of

the said order are necessary.

3. A suit had been filed by the Plaintiffs for specific performance of the Agreements for Sale dated 11/5/1979 and 5/8/1979 as confirmed by the defendant No.1 by agreements dated 1/10/1980 in respect of flat Nos.1, 2, 3 and 4 in the suit building named as “Shakhar Apartment”. The suit was decreed by this Court on 28th August, 2000.

4. Notice of Motion No.563/2019 had been taken out by the Review Petitioner in the disposed of suit claiming title to the said land and seeking the setting aside of the decree. The decree was being executed by the Plaintiffs and it is apparent from the decree that the subject matter of the suit which had been decreed did not pertain to the said land on which the suit building was constructed. The suit building was in a dilapidated condition and that the Court Receiver who had been appointed under the decree had directed that the suit building required redevelopment. It was pursuant to this direction that the Plaintiffs had applied for re-

development of the suit building.

5. Considering that this Notice of Motion had been taken out by the Review Petitioner seeking the setting aside of the decree which had been passed way back on 28/8/2000, this Court had in the interest of parties and considering that a consensus had been arrived at between the parties passed the said order dated 20/9/2019 granting liberty to the parties to make a joint application to the Court Receiver for re-development of the building on the said land. There was no dispute in so far as the Review Petitioner being the owner of the said land. The Review Petitioner would give his no objection for redevelopment of the suit building subject to the Review Petitioner's right in the said land being protected. The relevant paragraph 2 of the said order reads thus--

Paragraph 2 -

“A general consensus is arrived at by the parties to the Notice of Motion that there will be no dispute in so far as the Applicant being the owner of the Suit land. It appears that the only dispute which really

remains is with respect to the structure which has been constructed on the suit land and regarding the redevelopment of the structure. It has been agreed between the parties including the Applicant that they will jointly apply to the Court Receiver for having the structure on the Suit land redeveloped and that the Applicant will give his no objection for the redevelopment subject to the Applicants rights in the Suit land being protected. The Court Receiver shall also determine whether the Applicant is the owner of the Suit land. The no objection shall be obtained from the Applicant upon the Applicant establishing itself as the owner of the Suit land and the no objection shall in turn be subject to the permission obtained by the Applicant under Section 36 of the Maharashtra Public Trust Act. Accordingly, the appointed Court Receiver is directed to entertain the joint application of the parties to the Notice of Motion for the redevelopment of the structure on the Suit land and the Court Receiver shall file a report in this Court as to the redevelopment which shall be effected on the Suit land as well as record a finding on the issue of ownership of Applicant of the Suit land. The Court Receiver shall also in his report state as to whether the Applicant has given its no objection for

redevelopment of the structure on the Suit land in the event that it is found that the Applicant is the owner thereof as well as the steps taken for redevelopment.

6. The Learned Counsel for the Review Petitioner has submitted that this Court in the said order despite recording that there is no dispute in so far as the Review Petitioner being the owner of the said land on which the building is constructed, has directed the Court Receiver to record a finding on issue of ownership of the Review Petitioner to the said land. He has submitted that since there was no dispute as to the Review Petitioner being the owner of the said land, such a direction was not required to be issued to the Court Receiver.

7. He has submitted that in paragraph 2 of the said order it is recorded that the no objection of the Review Petitioner shall be subject to permission obtained under Section 36 of the Maharashtra Public Trust Act. He has submitted that upon a reading of Section 36 of the Maharashtra Public Trust Act, it is

clear that the approval / sanction that the applicant-trust can seek from the office of Charity Commissioner, Mumbai is for alienation / sale of the immovable property. In the light of the said provision, he has submitted that since the said land is not being alienated, such permission under Section 36 of the Act was not required. He has submitted that this Court is required to clarify that the said development / redevelopment shall only be in respect of the suit structure / building and that there shall not in any way be an alienation of the said land, which belongs to the Review Petitioner. He has submitted that although the said order records the general consensus of the parties that they would jointly apply to the Court Receiver for having the suit building on the said land redeveloped, this should not in any way be construed to mean that the Review Petitioner has given up his claim of title to the said land. He has submitted that the Review Petitioner be granted liberty to take out appropriate proceedings for protecting his title to the said land against whomsoever may dispute the same.

8. Having considered the submissions, it would be necessary to clarify/modify the said order. The said order dated 20/9/2019 had been passed in Notice of Motion No.563/2019 which was taken out by the Applicant/Review Petitioner several years after the decree dated 28/8/2000 had been passed, disposing of Suit No.966/1982. By the said Notice of Motion, the Applicant had sought the setting aside of the said decree. This Court noted that the Court Receiver who had been appointed under the decree had observed that the suit building was in a dilapidated condition and would require reconstruction and for which the Plaintiffs / Decree Holder had sought appropriate orders for redevelopment of the suit building in the execution proceedings. Considering that the Review Petitioner now claimed that the suit land on which the suit building had been constructed belonged to them, this Court took such claim into account whilst passing the said order. Considering that the said order is read as if this Court has directed the Court Receiver to determine the title of the Review Petitioner to the said land, it would be appropriate to clarify that the said order cannot be so read. There has been a

general consensus of the parties as recorded in the said order that there would be no dispute in so far as the Review Petitioner being the owner of the said land. Hence, it is clarified that the Court Receiver is not required to determine the title of the Review Petitioner to the said land. The Court Receiver shall only obtain the no objection from the Review Petitioner as owner of the said land for re-development of the suit building.

9. It would also be appropriate to clarify that in the said order dated 20/9/2019 where the words “suit land” have been mentioned, the said land being not the subject matter of the Suit No.966/1982, hence the said land has been incorrectly referred to as the “suit land”.

10. A clarification is also necessary that the no objection to be obtained from the Review Petitioner would not be subject to the permission obtained by the Review Petitioner under Section 36 of the Maharashtra Public Trust Act. The said provision is not applicable in the present case as Section 36 is in respect of

alienation of immovable property of a public trust and hence not applicable to a building being re-developed on the said land. The Review Petitioner will be at liberty to adopt appropriate proceedings for protecting his title to the said land against whomsoever may dispute the same.

11. It appears that a Report has been filed by the Court Receiver bearing No.218/19 dated 7/11/2019. It has been clarified in the Court Receiver's Report that the suit building stands in the name of Mahadev Gangadhar Tiwari, the father of defendant No.1 in the suit whereas the said land bearing CTS No.571 on which the suit building was constructed is owned by the Review Petitioner / Kurla Estate Trust. It is recorded in the Report that the Review Petitioner has not yet filed their no objection with the Court Receiver as permission is required from the learned Charity Commissioner, Mumbai. Considering this order which is now passed, the Court Receiver is directed to issue appropriate orders for redevelopment of the suit building as the permission of the learned Charity Commissioner, Mumbai is not required in the

present case. The review petition is disposed of in terms of the above order.

12. The Court Receiver's report No.218/2019 is also disposed of.

(R. I. CHAGLA J.)