IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.98 OF 2017
WITH
NOTICE OF MOTION NO.994 OF 2018
IN
SUIT NO.41 OF 2017

Surinder Kaur Sablok & Ors ..plaintiffs
Vs.
Grace Estate Development Venture & Anr ..Defendants

Mr. Paritosh Jaiswal a/w Mr. Rubin Vakil I/b Ashok Purohit & Co. for plaintiffs
Ms Ankita Singhania I/b Mohd Rehan Sayeed Chhapra for Defendant No.1
Mr. Sayeed Mulani a/w Ms Shobhana Waghmare and Mr. Abhishek Sawant I/b Mulani & Co. for Defendant No.2
Mr. R. Y. Sirsikar for MCGM

CORAM : K.R.SHRIRAM, J.
DATE : 12th MARCH, 2019

P.C.:

1 This Suit revolves around the property — Ashish Building No.21 in Manish Nagar, bearing Survey No. 145 & 146, C.T.S No. 826 & 827, situate at J.P Road, Manish Nagar, Andheri (west), Mumbai 400-053 ('Building').The Building forms part of a larger layout known as 'Manish Nagar' consisting of 49 buildings and an area of 1,28,115 sq. mts. The said layout was approved in the year 1971. The Building was constructed before the year 1980 and was in a dilapidated condition. This court had from time to time passed various protective orders.

2 Plaintiffs are 16 out of 42 members of defendant no.2 society.

The circumstances for plaintiffs to approach this court could be found in paragraph 3 of order dated 19th September 2018 and the same reads as under:

> *"3. The circumstances in which the plaintiffss who are 16 (out of 42) members ofthe Defendant No.2 Society have had to approach this Court are as follows:*
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> *a. Sometime in and around 2004-2005 the Building was declared dilapidated. The Defendant No. 2 Society therefore resolved to redevelop the said Building. To further this intention, the Defendant No. 2 passed a resolution dated November 20, 2005. Pursuant to the said resolution, Defendant No. 2 appointed Defendant No. 1 to redevelop the Building, and construct a new multi-storied building.*
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> *b. Defendant No. 2 entered into a duly registered Development Agreement dated November 22, 2005, with the Defendant No. 1 ('Development Agreement').*
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> *c. On 11th January 2007 the federation of all the 49 buildings namely Manish Nagar Society's Association issued a NOC to Ashish Building No.21 permitting the Society- Defendant No.2 to redevelop their plot by availing 100% FSI along with 100% TDR of the plot area of 2428.87 sq. meters.*
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> *d. Accordingly, Defendant No. 1 submitted a proposal to re-develop the Building to Defendant No.3 for constructing a building comprising of 2 Wings of stilt + 1st and 2nd floors podium parking + 3 to18 floors for residential use ('Suit Property').*
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> *e. When the proposal for redevelopment of the said Building was made, a detailed report dated 1st November 2007 ('report') was made by the Executive Engineer (B.P) W.S.K./W&P for the consideration of the then Municipal Commissioner,highlighting the issues faced by the Society proposing to redevelop the said Building, including the fact that the said Building would be economically viable only if the redevelopment was permitted with consumption of 2.00 FSI (as per prevailing Development Control Regulation 1991). It was represented by the Executive Engineer that consumption of TDR is necessary to make the project economically viable.*
>
> *f. The said report made by the Executive Engineer mentions the fact that the Manish Nagar layout comprising of more than 1,28,115 sq. mts. has been approved in the year 1971 and that the plots under reference in the said layout are not sub-divided. The report mentions that since there is no sub-division of the plot, separate PR card is not available, though individual societies have constructed walls around*

their buildings. The report mentions that the layout is accessible from J.P. Road of 90meter width and 9 meter wide internal road.

g. The report notes the fact that even in the year 2007, when the said report was made, the said Building was in extremely dilapidated condition and was prone to mishap. The report notes the fact that, there was a proposal for re-development of the said Building submitted by the Defendant No.2 and members of the Defendant No.2 Society would only vacate the said Building, if approvals were granted by the Defendant No.3 for the proposed redevelopment.

h. The report further records that the said Building is allocated 2428.87 sq. mtrs. area as per the layout plan. In view of the above facts, the Architect of Defendant No.1 sought various concessions from the then Municipal Commissioner including permission for utilization of permissible TDR on the built up area of 2428 sq. mts.

i. The Defendant No.1 represented to the then Municipal Commissioner that a proposal of redevelopment of the said building would be economically viable only upon the consumption of 1.00 FSI and equivalent TDR and by increasing the height of the building, as in this case there was no option except for vertical extension. In view of the above, clearly demonstrated hardship, the Defendant No.1 requested that the Commissioner exercised the powers vested in him by virtue of Regulation 64(b) of the Development Control Regulations 1991 to grant special permission for re-development of the said Building.

j. On the basis of the recommendations made by the Executive Engineer in the said Report,vide the Approval dated 27th December 2007 (Approval),the then Municipal Commissioner while noting the fact that the larger Manish Nagar Layout of buildings and plots is not sub-divided, the existing built up area of the said Building is adopted as 2428.87 sq. mts. and equivalent TDR proposed to be utilized. Accordingly, sanction was accorded for redevelopment of the said Building on the basis of plot potential being 2428.87 sq. mts. with TDR being permissible to be utilized upto 85% of the plot potential. The Approval dated 27th December 2007 reads as under :

"it can be seen from the layout plan at Page C-195 that it is a layout of building and the plots are not-subdivided. Hence the existing built up area of the building i.e 2428.87 sq.mtrs. is adopted as plot potential and equivalent T.D.R. is proposed to be utilized.

In the revised plans, the Architect has shown the entire plot area of the layout as per approval dated 18.04.1972 as at page C- 195, it may also be mentioned here that advantage of 15% R.G. area and internal roads was granted for F.S.I. purpose as per the then M.C.'s Sanction dated 09.10.1971 as a past commitment of layout initially approved under No. SE/LO/94-K dated 03.08.1965 (zerox copy at

Page C-197-199). As regards restriction of plot area to 2125 sq.mtrs for F.S.I. purpose the same may not be applicable in this case as the individual plots are not sub-divided and existing built up area is considered as plot potential. However the loading of T.D.R. in the layout will be restricted to 85%. Submitted for approval to points (I) & (II) on Page N-2"

k. On the basis of the above, Approval, IOD dated 17th March 2008 came to be issued by the Defendant No.3. As per the conditions of the IOD, members of the Defendant No.2 were shifted to temporary alternate accommodation. The existing Building on the said plot was demolished and the Sub-Engineer of Defendant No.3
visited the site and inspected the plot after the demolition.

l. Individual Agreements were entered into between the Defendant No.1 and the members of Defendant No.2 Society. The Defendant No.1 commenced payment of monthly rent to the members of the Defendant No.2 Society.

m. In June 2010 Defendant No.1 purchased 600 sq. mts. of TDR in order to utilize the same for redevelopment of the said Building.

n. Thereafter on 10th March 2011 Commencement Certificate (CC) was issued upto top stilt (part) by Defendant No.2 which was further extended upto 10th floor by CC dated 28th May 2012.

o. It appears from the record that there are various letters addressed by Defendant No.3 to the Defendant No.1 which clearly demonstrate that the Approval granted for redevelopment of the said Building, was an approval for a building comprising of two wings of stilt plus 1st and 2nd upper floors as podium for car parking plus 3rd to 18th floors for residential user following the concessions granted by the Municipal Commissioner. The same is evident from the letters dated 24th July 2013, 22nd July 2013 and 22nd July 2015 addressed by the Defendant No.3.

p. In the meantime, as per the modified DC Regulations, amended plans were submitted by the Defendant No.1, proposing to utilize permissible fungible compensatory FSI in addition to the utilizationof plot potential of 2428 sq. mtrs. alongwith permissible TDR. At this stage since no further I.O.D and C.C. was received from Defendant No.3, the work of re-development came to a standstill around 2013.

q. As a result, on 14th October 2016 the present Suit came to be filed by 16 out of 42 members of the Defendant No.2 Society, inter alia praying for an order for grant of direction to the Defendant No.3-MCGM to grant further approvals so that the Suit Property may be completed and flats may be handed over to the members of the Defendant No.2 Society.

3 In the present case, an approval for utilisation of FSI 2428.87 Sq.mtrs equivalent TDR was given by MCGM. Due to various reasons even MCGM has attached the building under its assessment tax department. Unless the construction is completed expeditiously, plaintiffs apart from defendant no.2 and other members of defendant no.2 will be on street. Defendant no.1 has also created third party rights by selling flat to prospective buyers. It is stated that despite approving plan by its order dated 26/27th September 2007, MCGM is not granting IOD and CC for further construction. Representations were pending before the Commissioner of Municipal Corporation and this court by its order dated 19th September 2018, directed the Municipal Commissioner to take into consideration the facts of the case and hardship faced by plaintiffs and others and take appropriate decision in the light of the principle approval granted on 27th December 2007, so that the development can proceed further. The Municipal Commissioner has by an order dated 22nd November 2018 passed an order stating that the principle approval granted on 27th December 2007, was erroneous.

5 Ms Singhania and Mr Jaiswal submitted that the Municipal Commissioner has proceeded on an erroneous assumption that the lay out was subdivided, whereas it has not been. Ms Singhania and Mr. Jaiswal submitted that this building still forms part of Manish Nagar lay out and

only this building went for redevelopment because it was in very dilapidated condition. Counsel submitted that the Municipal Commissioner has not considered any of these points but has simply proceeded on the basis that the lay out was subdivided, whereas there is no order of subdivision of lay out.

6 Mr. Sirsikar for defendant no.3 was also unable to even point out how the plot became a subdivided plot. Ms Singhania states that defendant no.1 should be permitted to challenge this order of Municipal Commissioner by filing a writ petition under Article 226 of the Constitution of India. Mr. Jaiswal states that plaintiffs will also extend all support.

7 In the circumstances, liberty is granted to either plaintiffs or defendant no.1 or defendant no.2 society to challenge this order of Municipal Commissioner passed on 22nd November 2018, in the appropriate court. All rights and contentions of plaintiffs and defendant nos.1 and 2 are kept open. I must state that I have not expressed any views in the order passed by the MCGM.

8 In view of this order, the notices of motion stand disposed with liberty as granted above. Ad-interim order passed in Notice of Motion No.994 of 2018 dated 13th February 2018, shall continue. It is open to

plaintiffs and defendant nos.1 and 2 to challenge any further demand by MCGM regarding the property tax. All rights and contentions in that regard are kept open.

9 Liberty is granted to plaintiffs to file a fresh notice of motion including for demanding enhanced rent, at the appropriate stage.

(K.R. SHRIRAM, J.)