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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodging) No. 3310 OF 2019

Manohar Oza & Ors .. Petitioners.

Vs

Mumbai Municipal Corpn. & Ors .. Respondents.

Mr. Pradeep Thorat, Advocate for the Petitioners.

Mr. Anoop Patil a/with Sheetal Metakari for BMC.

Mr. Vivek Walawalkar i/by Sameer R. Bhalekar for Respondent No.3.

**CORAM : S.J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**

DATED :- 16th December, 2019.

P.C. :-

1. The above Writ Petition is filed by 5 out of 250 members of the Modern Usha Co-operative Housing Society situate at Evershine Nagar, Malad (West), Mumbai 400 064 (for short **Society**). These five members are against the Society carrying out redevelopment of its building constructed more than 30 years ago.

2. Earlier, a Writ Petition being No. 1679 of 2014 was filed interalia by the Society (Respondent No.3 herein) before the Division Bench of this Court. The Society had submitted before this Court that the Society building is in dilapidated condition and

therefore, urgent action is required to be taken by all concerned. The Society had requested the Court to direct the MCGM to issue a No Objection Certificate (for short NOC) to the Petitioners-Society to carry out the redevelopment of the dilapidated building. The MCGM also submitted before the Court that the building is in C-1 category i.e. in dilapidated state and needs to be demolished. The Division Bench (Coram: Anoop V. Mohta and A.A. Sayed, JJ) by its order dated 28th July, 2014 after recording the submissions of the Society as well as MCGM, directed the Deputy Registrar, Co-operative Societies to consider the application/request for NOC to the petitioners after giving an opportunity to the petitioners to produce necessary documents. The Deputy Registrar, Co-operative Societies was directed to complete this exercise within a period of eight days from the date of the said order.

3. Pursuant to the said directions dated 28th July, 2019, the Deputy Registrar, Co-operative Societies after considering the application of the Society granted his No Objection Certificate dated 2nd August, 2014 to the Society. Thereafter, this Court by its order dated 5th August, 2014 took the said NOC on record and also recorded the statement made by the Municipal Corporation that necessary IOD will be issued within a period of one week from the date of the order i.e. 5th August, 2014, subject to compliances of all necessary formalities. In the earlier Writ Petition filed by the Society, the present 5 Petitioners had taken out a Chamber Summons (Lodging) No. 226 of 2014 seeking permission from the Court to intervene and oppose the issuance / grant of the NOC by the Municipal Corporation. However, the Chamber Summons was disposed of

by keeping their contentions open for being agitated before the appropriate Forum.

4. Pursuant to the said order of the Division Bench dated 5th August, 2014, the petitioners filed an application before the Divisional Joint Registrar impugning the grant of NOC dated 2nd August, 2014 by the Deputy Registrar, Cooperative Societies. The said application stood dismissed by the Divisional Joint Registrar by his order dated 12th November, 2014. The Petitioners filed Writ Petition No.2316 of 2015 impugning the decision of the Divisional Joint Registrar dated 12th November, 2014, which Writ Petition was also dismissed on 24th June, 2019.

5. The petitioners i.e. 5 out of **250** members have now filed the present Writ Petition seeking directions against the respondent/Corporation to refer the matter regarding structural stability of the building to the Technical Advisory Committee (TAC) in view of the policy framed by respondent No.1-Corporation.

6. As stated herein above, the Petitioners are **5** of the **250** members of the Society who have been opposing the endeavour of the Society to redevelop the dilapidated building of the Society since the year 2014. This Court in Writ Petition No. 1679 of 2014 has already recorded the statement of the Municipal Corporation that the building falls in C-1 Category i.e. the building is in dilapidated condition and needs to be demolished. The NOC pertaining to the redevelopment is also granted to the Society by the Deputy Registrar, Co-operative Societies by his order dated 2nd August, 2014. As recorded by the Division Bench of this Court in its order dated 5th August, 2014, the same is accepted by the Court. The NOC granted for redevelopment was challenged by

the petitioners in revision before the Divisional Joint Registrar, Co-operative Societies which was dismissed on 12th November, 2014. Civil Writ Petition No. 2316 of 2015 filed therefrom by the petitioners herein was also dismissed on 24th June, 2019. We are therefore convinced that the petitioners, on one pretext or the other, are only delaying the process of redevelopment of the Society building which according to the Corporation and other Authorities fall in C-1 Category meaning thereby that the building is in dilapidated condition and needs to be forthwith demolished. A minuscule minority of 5 out of 250 members of the Society like the Petitioners, cannot be allowed to delay the process of redevelopment and put the life of other members as well as the persons using the area around the said building to risk. No interference is therefore required under Article 226 of the Constitution of India. The Writ Petition is therefore dismissed.

7. At the request of the learned Advocate for the petitioners, it is clarified that the application pending before the Divisional Joint Registrar, Co-operative Societies for dissolution of the Committee of the Society shall be decided without being influenced by this order. However, we also clarify that the petitioners will not be allowed to agitate before any Authority that in view of the said application pending before the Divisional Joint Registrar, Co-operative Societies, the redevelopment work should not proceed.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)