

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION (L) NO.4162 OF 2018

Rukhsana Yusuf Harianawala & anr. ... Petitioners

Vs

Maharashtra Housing and Area
Development Authority & Ors. ... Respondents

Mr.Anil Anturkar, Senior Advocate with Mr.Altaf Khan i/b Mr.Nitesh Acharya for the Petitioners

Mr.P.G. Lad with Ms.Aparna Kalathil and Ms.Sayli Apte for Respondent Nos.1, 2 & 38

Ms.Shreya Parikh i/b Mr.Vishal S. Shriyan for Resp. Nos.23, 28, 32, 34, 35 and 37

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

DATED: SEPTEMBER 24, 2019

P.C.:

1. The petitioner has raised many issues. However, on account of certain developments which took place during the pendency of the petition, majority of the issues get narrowed down. Bare minimum facts needed for disposing of the petition are as under:

The petitioners are the owners of a building called Vapra Chawl situated at Saifee Jubilee Street, Bhuleshwar Division, Mumbai. (for short, hereinafter to be referred to as the 'suit property'). The suit property is flanked on two sides by buildings called Khadicha building and Furniturewala building. These two adjacent buildings were in dilapidated condition and, therefore, had to be pulled down. According to the petitioners, the suit property was not in such condition which did not permit repair thereof. The petitioners wanted to salvage the suit property by carrying out repairs for which an application was also made to the authorities. The authorities, however, held the belief that the building was beyond salvage and had to be demolished. After one round of litigation, the competent authority passed the impugned order dated 4.12.2018.

2. He held that since the building was in a dilapidated and ruinous condition, the tenants and occupants should vacate the building within 10 days and that the building should be demolished at the earliest alongwith the demolition of the adjacent buildings.

3. The other grievance of the petitioners is that respondent Nos.3 to 17, who are the trustees of the public charitable trust, are

seeking to develop the plot where these buildings are situate, by way of cluster development in terms of Development Control Regulations No.33(9) (for short, "DCR"). According to the petitioners, the land where the building is situate, is neither purchased by the proposed developers nor acquired by the authorities so as to form part of any such development.

4. During the pendency of the petition, the petitioners had sought interim protection against the demolition of the building. Such protection was granted by this Court, however, on certain heavy conditions of the petitioners taking the responsibility of any loss, damage that may be caused to anyone in the process. The petitioners were not willing to undertake such liabilities. This Court, therefore, passed an order on 12.6.2019 and vacated the interim orders dated 16.5.2019 and 19.12.2018 leaving it to the authorities to demolish the building except for the ground floor. The relevant portion of the order reads as under:

"4. It is an admitted position that Vapra Chawl is presently vacant and there are no occupants in the said building. At present, we are not entering into the controversy whether even the ground floor of the Vapra Chawl being too dilapidated, needs to be pull down and whether after demolition of other two adjacent buildings and demolition of other two adjacent buildings and demolition of remaining

floors of Vapra Chawl, the ground floor can still remain intact and strong enough to reoccupy with or without repairs. In view of the statement of the counsel for the petitioners, it is not necessary to continue the interim injunction granted by this Court in the said order dated 16th May, 2019. This would however, be subject to restricting the respondents from demolishing the ground floor of Vapra chawl building. This would however be on an undertaking by the petitioners that till full demolition of the upper floors of the Vapra Chawl and of the two adjacent buildings is carried out, neither the petitioners nor any of their relatives or agents would enter, leave alone, occupy the ground floor of the building.

5. In view of the above discussion, interim injunction granted by the order dated 16th May, 2019 as well as the earlier injunction dated 19th December, 2018 is vacated. The respective respondents/authorities would be at liberty to carry out demotion work of all floors of Vapra chawl building except the ground floor and the two adjacent buildings to the extent permissible as per orders of demolition passed by the competent authority. It is further provided that even after such demolition is completed, no one shall enter or occupy or re-occupy any portion of the ground floor of Vapra Chawl even if it survives the demolition of the rest of the structures, without the leave of the Court.

6. In view of these directions, the onus and the liability imposed by this Court in the said order dated 16th May, 2019 on the petitioners would no longer apply.”

5. It is an admitted position that pursuant to the said order, the authorities carried out demolition of both the adjacent buildings as well as demolition of the upper floors of the suit premises. Virtually, the demolition work is thus, completed. In that view of the matter, we do not find it necessary now to examine the correctness or

legality of the impugned order dated 4.12.2018. More so, it is not even pressed before us by the petitioners that since the order for demolition was passed wholly arbitrarily or malafide and that, therefore, after setting aside such an order, the petitioners must be compensated for demolition carried out on the basis of such order. In fact, demolition has been carried out as permitted by this Court since the petitioners were reluctant to weigh the burden of heavy conditions imposed by the Court on earlier occasions for granting stay against the demolition.

6. Central grievance of the petitioners, however, is that the petitioners' land not having been purchased nor acquired, cannot form part of cluster development. In this context, the Counsel for respondent Nos.3 to 17 as well as Counsel for Respondent Nos.1, 2 and 38 i.e., MHADA, clarified that in the final sanctioned layout for cluster development, the land of the petitioners is not included. They, however, clarified that this would not preclude the respondent Nos.3 to 17 from carrying out negotiations for private purchaser nor the authorities from acquiring the land if the conditions contained in the DCR are satisfied. The learned Counsel for respondent Nos.23, 28, 32, 34, 35 and 37, who claim

to be the tenants of the premises submitted that they have been evicted from the premises on the basis that they would be relocated after construction of the building at the said site. Their rights cannot be jeopardised on account of disputes between the petitioners and the rest of the respondents.

7. In view of the clarification made by the learned Counsel for respondent Nos.3 to 17 and respondent Nos.1, 2 and 38, the petitioners' apprehension that the land in question may form part of the cluster development without purchase through private negotiations or acquisitions, must be put to rest. The petitioners' grievance in this respect, therefore, in view of the clarification made by the said Counsel does not survive. As of now, thus, the land in question does not form part of the sanctioned layout for cluster development. Nothing would prevent the respondents from making legal efforts so as to include the land in question as part of the cluster development. The petitioners' rights to resist such an attempt in accordance with law are also kept open. As a consequence thereof, there is no impediment in law for the petitioner to apply for development of the said land and we are sure the authorities will examine the same in accordance with law.

Insofar as the tenants are concerned, if such tenants/occupants have any grievances against the petitioners or authorities, it would be open for them to take out independent proceedings.

8. Now, that the repair of the building is not possible, the petitioners would apply to the authorities for refund of the amount already deposited for such purpose. The authorities shall make a refund thereof after adjusting cost for demolition, if any, borne by such authorities.

9. With these observations and directions, the petition is disposed of.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)