

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 620 OF 2020  
IN  
CRIMINAL APPLICATION NO. 59 OF 2012  
IN  
CRIMINAL APPEAL NO. 1555 OF 2011**

|                                      |                                 |
|--------------------------------------|---------------------------------|
| M/s. Vastu Group and anr.            | .... Applicants<br>(Intervenor) |
| <u>in the matter between :-</u>      |                                 |
| Mr. Avinash Wamanrao Thorat and anr. | .... Appellants                 |
| v/s.                                 |                                 |
| The State of Maharashtra and anr.    | .... Respondents                |

**WITH  
CRIMINAL APPEAL NO.1555 OF 2011**

|                                  |                  |
|----------------------------------|------------------|
| Avinash Wamanrao Thorat and anr. | .... Appellants  |
| v/s.                             |                  |
| The State of Maharashtra         | .... Respondents |

Mr. Vivek Salunkhe i/b. Mr. Ajinkya Jaibhave for the Applicants.  
Mr. Mohan Kurund a/w. Mr. Amit Icham for the Appellants.  
Mr. S.V. Gavand, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 22<sup>nd</sup> NOVEMBER, 2021.**

**P. C. :-**

. By this Application, the Applicants have sought the following reliefs :-

*“(a) This Hon’ble Court may be pleased to allow the present Interim Application in Criminal Application No.59 of 2012 by allowing the Applicant to Redevelop the said Housing Society and continue the attachment on the Flat No.18 and 19 of the Respondent No.2 and 3 on the flats*

*allotted to the Respondent No.2 and 3 in the redeveloped building.*

*(b) This Hon'ble Court may be pleased to modify the order dated 23.01.2012 passed by this Hon'ble Court in Criminal Application No. 59 of 2012 and thereby allow the Applicant to carry out redevelopment with respect to the said housing society. ”*

2. Learned counsel for the Applicants, under instructions, states that the prayer is restricted to the 1<sup>st</sup> part of prayer clause (b) i.e., to relax/ modify the order dated 23/01/2012 in Criminal Application No.59/2012 in Criminal Appeal No.1555/2011.

3. The Applicants in Criminal Application No.59/2012 who shall be hereinafter referred to as the accused, have filed an Appeal under section 374 of Cr.P.C. (Criminal Appeal No.1555/2011) challenging the judgment and order dated 02/12/2011 in Special Case No.10/2002 under which they have been convicted for offence punishable under section 13(1)(e) r/w section 13(2) of the Prevention of Corruption Act. Apart from the sentence of imprisonment and fine, the learned Judge has also ordered sale of flat nos.18 and 19 in Dweep Co-operative Housing Society, College Road, Nashik-5 in public auction with further directions to deposit the sale proceeds in Government treasury after the

Appeal period.

4. The Criminal Application No.59/2012 was filed with a prayer to stay the sale of flats in public auction. By order dated 23/01/2012, this Court stayed the sale of the flats subject to the condition that the said two flats shall remain under attachment of the Court during the pendency of the Appeal. The accused were further directed to file an undertaking before this Court not to sell, mortgage, alienate or dispose of this property in any manner pending the Appeal and liberty was granted to the accused and their family members to reside in the said flats. Pursuant to the said order, the accused have filed an undertaking not to sell, mortgage, alienate or dispose of the said flats.

5. Mr. Vivek Salunkhe, learned counsel for the Applicants states that the building which is sought to be re-developed, is in dilapidated condition. The majority of the members are senior citizens. He has stated that out of 21 members, 18 members are in favour of re-development and that they have signed the resolution for re-development as well as for appointment of Applicant No.1 as a developer. He has further submitted that the Applicant No.1 and the members of the Society have also entered into MoU stating terms and

conditions of the development and that the said members have also given letters giving their consent for re-development. Learned counsel for the Applicant states that the Society is unable to submit a proposal to the DDR of Co-operative Housing Society in view of the order of this Court in Criminal Application No.59/2012. He submits that despite requests, the accused have not sought relaxation of the order dated 24/08/2021. He submits that the developer is ready to deposit the amount of Rs.67,95,602/- being the value of the two flats as valued by the Deputy Divisional Engineer, PWD, Sub-Division, Nashik and further upon redevelopment, to continue the attachment of the flats which shall be allotted to the accused. He submits that the condition imposed by this Court in order dated 23/01/2012 in Criminal Application No.59/2012 causes prejudice to the other members of the Society who are prevented from re-developing the property.

6. Mr. Mohan Kurund, learned counsel for the accused submits that the accused have not consented for re-development of the building. He submits that no notice was issued to the Applicants and that the credentials of the developer are in question and further the entire process is illegal. He submits that the present Application is filed only to bypass development process. He states that relaxation of the order

will frustrate the rights of the accused to challenge the said development process.

7. Mr. S.V. Gavand, learned APP submits that there is no objection to relax/modify the order subject to the condition that the interest of the State is protected.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The Applicant No.2 is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act. The General Body of the Society has passed a resolution for re-development of the building wherein subject flats are situated. It is stated that on 07/09/2019, the General Body has passed a resolution appointing the Applicant No.1 as a developer. It is further stated that the majority of the members have given their consent for re-development of the housing society and have accordingly, given their consent letters.

10. The records prima facie indicate that society is unable to give effect to the resolution and consequently unable to submit a proposal and develop the said building in view of the condition imposed by this

Court in order dated 23/01/2012. It is to be noted that the said condition was only to safeguard the interest of the State. Mr. Arvind Vithal Patil – Chairman of Applicant No.2 – Society has filed an Additional Affidavit dated 08/02/2021 wherein he has stated that until the flats in the new building are allotted to the accused in lieu of flat nos.18 and 19, the Applicants are ready to deposit the amount equivalent to the current valuation of flat nos.18 and 19. He has further stated that after completion of the project, flats would be allotted to the accused in lieu of flat nos.18 and 19 and that the said flats will remain under attachment as ordered by this Court in order dated 23/01/2012.

11. Pursuant to the order dated 24/08/2021 passed by this Court, the Deputy Divisional Engineer, Sub-Division, Nashik has valued flat nos.18 and 19 at Rs.67,95,602/-. Mr. Uday Ghuge, the proprietor of Applicant No.1, has also filed an additional affidavit dated 11/09/2021 wherein he has stated that the Applicants are ready to deposit an amount of Rs.67,95,602/- being the current valuation of two flats. He has further stated that upon demolition of the building and re-development, flats will be allotted to the accused in lieu of flat nos.18 and 19 and the same will remain under attachment as per the order of

the Court.

12. As noted above, the condition which is sought to be relaxed was only to secure the interest of the State. The Applicants have expressed their willingness to deposit the amount equivalent to the valuation of the flats, and thereby secure the interest of the State. In such circumstances, continuing the said condition will adversely impact the rights of the members of the society to live in a building which is safe and in a habitable condition. The accused cannot make use of this condition to stall the Development process. Needless to state that challenge, if any, to the development process or the appointment of developer, can always be raised in an appropriate proceedings. Hence, relaxation of condition will not cause prejudice to the State or to the accused.

13. Under the circumstances, the following order is passed :-

(i) the order dated 23/01/2012 is modified to the extent that the attachment on flat nos.18 and 19 in Dweep Co-operative Housing Society, College Road, Nashik-5, is lifted subject to the Applicants depositing an amount of Rs.67,95,602/- before this Court within a period of three months. The said amount be invested in fixed deposit until

further orders.

(ii) Upon redevelopment of the property, the Applicants shall furnish complete details of the flats and file a plan identifying the flats proposed to be allotted to the accused in lieu of flat nos.18 and 19.

(iii) The said flats shall remain under attachment of this Court and the accused shall not sell, mortgage, alienate or dispose of the said flats in any manner pending hearing of the Appeal.

(iv) Upon allotment of the flats to the accused, the Applicants will be at liberty to withdraw an amount of Rs.67,95,602/- with interest accrued thereon.

(v) It is made clear that this order shall not preclude the accused from challenging the development process and/or appointment of the developer.

14. The Interim Application No.620/2020 stands disposed of in above terms.

**PREETI  
H JAYANI**

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Date: 2021.12.04  
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**(SMT. ANUJA PRABHUDESSAI, J.)**