

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2138 OF 2021

Chandrakant Anant Haryan & Ors. .. Petitioners

Versus

State of Maharashtra, through the Secretary,
Housing Dept., Mantralaya & Ors. .. Respondents

-
- Mr. R.V. Bansode for the Petitioners
 - Mr. Nitin V. Gangal a/w. Ms. Prerna Shukla for Respondent No.2 - CIDCO
 - Mr. S.V. Marne for Respondent Nos. 3 & 4
 - Mr. R.D. Soni a/w. M. Sayeed, Mr. Tushar R. Momaiyah i/by Mr. V.R. Kasle for Respondent No. 5
-

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : AUGUST 26, 2021.

P.C.:

The above Writ Petition is filed seeking the following reliefs:-

- "a. That this Hon'ble Court be pleased to issue a Writ of prohibition restraining the Respondent 1 to 3 from taking any arbitrary illegal actions, including cutting water connections of Petitioners building and trying to vacate the Petitioners from the building forcefully, without following due process of law;
- b. That pending the final hearing of Appeal no. 800/2018 before Hon'ble Minister the respondent No. 1 to 3 be restrain from taking any action against the petitioner and / or their respective flats in building No. 64 to 81 on the basis of any application made or to be made by or / on behalf of Respondent No.5 society for redevelopment, demolition of building, vacating of flats etc., as the said Application made / to be made are illegal and collusive in nature;
- c. That this Hon'ble Court may be please to declare that, whatever business transaction such as tenders, MOU or any other agreements and resolutions passed or executed in respect of redevelopment of Building Nos. 64-81 of Respondent No. 5 Association have been done

at the instance of present Management Committee of Respondent No. 5 or newly constituted redevelopment Committee at the instance of Respondent No. 1 Association are null and void and bad in law for want of 100% free consents of existing members of Respondent No. 5;

- d. That this Hon'ble Court may be please to direct the Respondent No. 1 to 3, not to give any permission for demolition, eviction of the members from the premises redevelopment of Building Nos. 64-81 of Respondent No. 5 **Society**, till the Petitioners grievance is considered."

2. The present Petition is filed by 85 out of 288 occupants who were in occupation of the tenements in 18 buildings situated at Sector 9, Vashi, Navi Mumbai. The initial contention of the Petitioners before us was that the said buildings are not in a dilapidated condition and the Society should not ask them to vacate their respective premises. It will not be out of place to mention here, that out of 288 occupants, 177 occupants have already given their consent for redevelopment and 100 occupants have already vacated their premises since the last two years. The Developer is incurring the burden of paying compensation in lieu of temporary alternate accommodation to the said 100 occupants since the last two years.

3. Since the *modus operandi* of the occupants who do not wish to vacate their respective premises, to enable the society to redevelop the buildings, is to approach the Court on several grounds including the ground that the buildings are in good condition and need not be demolished for redevelopment, we passed the following order on

20.07.2021 which reads as under:-

- "1. The learned Advocate representing 85 out of 288 occupants of Gulmohar CHSL vehemently contends that the 18 buildings of Gulmohar CHSL. are not in a dilapidated condition and therefore it cannot be said that they fall under 'C-1' category. He further states that if Navi Mumbai Municipal Corporation (**NMMC**) appoints an Architect from their panel and upon inspection of the 18 buildings opines that they are in fact in a dilapidated condition, the 85 members represented by him will not challenge the report and will accept the same. The statement is accepted.
2. In view thereof, we direct the NMMC to appoint its panel Architect to examine the structural stability of the 18 buildings of Gulmohar CHSL. and submit his report to this Court on 29th July, 2021.
3. The Advocate for the Petitioners will be informed by the Advocate for NMMC as to when the Architect appointed by them will be visiting the Gulmohar Society to inspect the structural stability of the 18 buildings, to enable the members to remain present at the time of such inspection. However, the members will not be allowed to enter into any arguments with the Architect. The Architect may also take photographs showing the condition of the 18 buildings and annex the same to his report.
4. Stand over to 29th July, 2021, FOB."

4. We have now received reports from the independent Architect appointed by the Navi Mumbai Municipal Corporation (NMMC) in respect of 18 buildings. All the 18 buildings have been classified / categorized by the independent Architect under 'C-1' category i.e the buildings are in dilapidated condition and need to be demolished immediately.

5. Having faced with this report, learned Advocate appearing for the Petitioners submits that the 85 occupants are not against the redevelopment, however, their only contention is that the Society should carry out the work of redevelopment in accordance with law.

Needles to add, that the Society is bound to carry out the redevelopment in accordance with the law. In view thereof, the above Writ Petition stands disposed of.

6. At the request of the Court, the Corporation has borne the expenses incurred towards procuring reports from the Structural Auditors. The same shall not be treated as a precedent in future.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2021.08.28
11:44:40 +0530