

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9507 OF 2021**

Ashok Gopal Shinde and others ... Petitioners

Versus

Dindoshi Shree Satyam CHS Ltd. and others ... Respondents

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Mr. Mahadeo Chaudhari for the Petitioners.

Mr. Arif Bookwala, Senior Advocate alongwith Mr.S.D. Mishra instructed by ASD Associates for Respondent No.1

Ms. Sonali Jadhav for Respondent No.2 (MHADA).

Mr. M.M. Pabale, AGP for the State.

Mr. D.K. Mahajan, Executive Engineer, Building Permission Cell, MHADA, present.

Mr. S.B. Bhadange, Executive Engineer, Goregaon Division, Mumbai Board, present.

Mr. V.N. Pawar, Deputy Engineer, REEIMB, MHADA, present.

Mr. M.M. Khan, Officer on special duty, Goregaon Division, Mumbai Board, present.

Mr. Rajiv Rane, Representative of Je & Vee Infrastructure, present.

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

**DATED : DECEMBER 29, 2021
(Vacation Court)**

P.C. :-

1. By the present Writ Petition, the Petitioners have impugned the Order dated 17th December, 2021 passed by Respondent No.2 – Chief Officer, Mumbai Board in the proceedings under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (*the Act*). Section 95A of the Act reads thus :

“95A.Summary eviction of occupiers in certain cases. - (1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers

of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of that building and a No Objection Certificate for such reconstruction of the building is issued by the Board, to the owner or to the proposed co-operative housing society of the occupiers, as the case may be, then it shall be binding on all the occupiers to vacate the premises :

Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupant to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act, to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.”

2. In the present case, 32 out of 36 occupiers of the property under development have not only given their consent for redevelopment of the building, but have also vacated their premises and the developer has started paying them monthly compensation in lieu of temporary alternate accommodation. The present Petitioners are the only occupants who have till date not vacated their premises despite they having filed a Suit in Bombay City Civil Court being Suit No.1153 of 2020 and the

Interim relief reproduced herein being rejected by a detailed Order of the Court dated 9th December, 2020.

“Pending the hearing and final disposal of the suit, this Hon’ble Court by temporary order and injunction the Defendants No.1 to 4, their agents, servants, representatives and all persons claiming through them from disturbing the peaceful possession of Plaintiff’s respective rooms namely Room No.94/715, 93/712, 94/717, 93/705, and 94/716 situated at MHB Colony, Dindoshi Nagar, Malad East, Mumbai - 400 097 and/or from forcibly evicting them from their respective premises without following due process of law.”

3. The Petitioners have filed an Appeal impugning the Order dated 17th December, 2021 before this Court. However, no reliefs have been granted therein, till date.

4. Since about 93% of the occupants gave their NOC for redevelopment of the property and also handed over the premises used and occupied by them to the developer, the developer has started paying them monthly compensation in lieu of temporary alternate accommodation. The ingredients required to be satisfied under Section 95A of the Act having been met by the developer and the Society, the Respondent No.2 is correct in having directed the Petitioners by his impugned Order dated 17th December, 2021 to vacate their respective premises within a period of seven days from the date of receipt of the impugned Order.

5. The Advocate appearing for the Petitioners has submitted that the Petitioners are not against redevelopment but they have refused to vacate their

premises for the following reasons :

- (i) that the developer may not have enough funds to pay the necessary premiums to the Municipal Corporation for Greater Mumbai (**MCGM**) as and when the developer is called upon to make payments.
- (ii) that the sanctioned plan is not provided by the developer to the Petitioners.
- (iii) that the developer has not provided temporary alternate accommodation to the Petitioners.

6. The Learned Senior Advocate appearing for the Society and the representative of the developer have inter-alia submitted as follows :

- (i) that the Petitioners opposition against the redevelopment and the appointment of the developers was defeated by an overwhelming majority at the General body meeting of the Society.
- (ii) that all the meetings for the purpose of redevelopment were conducted by the Society as per the Government guidelines under Section 79A of the Maharashtra Housing Co-operative Societies Act, 1961.
- (iii) that the redevelopment of the property of the Society is under Regulation 33(5) of the Development Control Regulations.
- (iv) that 95% of the members of the Society are in favour of the redevelopment of the property.
- (v) that admittedly, the premises of 33 members have been demolished.

(vi) that if any relief is granted to the Petitioners in the above Writ Petition the same would have the effect of granting reliefs which were refused by the Bombay City Civil Court, Mumbai in the Interim Application taken out by the Petitioners in Suit No.1153 of 2020.

(vii) that the Petitioners are aware that the intimation of approval has been granted of zero FSI to the developer and that further plans can only be sanctioned once all the structures at site have been demolished.

(viii) that the Alternate Accommodation Agreements have been entered into by all the members except the Petitioners who with malafide intention are creating hurdles in the way of the redevelopment of the property by the Society.

(ix) that the developer has already spent huge amounts for the purpose of redevelopment of the suit property. The particulars of the same are set out in paragraph 4 of the Affidavit dated 28th December, 2021.

(x) that the developer undertakes to this Court to pay all the premiums as and when the developer required to pay the same to the MCGM.

(xi) that the developer undertakes to pay Rs.30,000/- per month (with annual increase of 10%) to each of the Petitioners being compensation in lieu of temporary alternate accommodation until the Occupation Certificate in respect of the new construction is obtained from the Corporation and new premises handed over to the respective Petitioners. The Petitioners shall also be paid one time shifting charge as

well as brokerage charges as agreed under the Development Agreement and/or paid to all other occupants/members of the Society who have vacated their premises.

(xii) that the Petitioners also undertake to complete the construction as set out in the Development Agreement and to provide permanent alternate accommodation admeasuring 800 sq.ft. each to the Petitioners; to execute Permanent Alternate Accommodation Agreement with the Petitioners, the terms of which will be identical to the terms provided in the Agreements already executed with the members/occupants who have vacated their premises and the same have been demolished; to provide copies of the plans to the Petitioners within 15 days from the date of the same being sanctioned by the MCGM and received by the Advocate for the developer-Society.

7. After the above arguments, parties have agreed to the following Order, which is passed by consent :

(i) The Petitioners undertake, to vacate their respective premises on or before 15th January, 2022. If they fail to do so, the Court Receiver, High Court, Bombay shall take possession of their premises under their occupation on 16th January, 2022, if necessary with the help of the police authorities and handover the same to the developer-Society.

(ii) The developer undertakes (a) to pay all the premiums as and when the developer is required to pay the same to the MCGM; (b) to pay Rs.30,000/- per

month (with annual increase of 10%) to each of the Petitioners being compensation in lieu of temporary alternate accommodation until the Occupation Certificate in respect of the new construction is obtained from the Corporation and new premises handed over to the Petitioners; (c) to pay one time shifting charge as well as brokerage charges as agreed under the Development Agreement and/or paid to all other occupants/members of the Society who have vacated their premises; (d) to complete the construction as set out in the Development Agreement and to provide permanent alternate accommodation admeasuring 800 sq.ft. each to the Petitioners; (e) to execute Permanent Alternate Accommodation Agreement with the Petitioners, the terms of which will be identical to the terms provided in the Agreements already executed with the members/occupants who have vacated their premises and the same have been demolished; (f) to provide copies of the plans to the Petitioners within 15 days from the date of the same being sanctioned by the MCGM and received by the Advocate for the developer-Society; and (g) to withdraw the pending proceedings before the Bombay City Civil Court, Mumbai and before this Court and/or any other Court within a period of 30 days from the date of the developer executing Permanent Alternate Accommodation Agreement in favour of the Petitioners.

- (ii) All the above undertakings are accepted.
- (iii) The above Writ Petition is accordingly disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)