

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2808 OF 2017**

Baburao Rambhau Khara & Ors

...Petitioners

Versus

State of Maharashtra & Ors

...Respondents

**WITH
INTERIM APPLICATION NO. 225 OF 2021
IN
WRIT PETITION NO. 2808 OF 2017
WITH
INTERIM APPLICATION NO. 1513 OF 2020
IN
WRIT PETITION NO. 2808 OF 2017**

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Mr HT Pawar, for the Petitioners.

Mrs Uma Palsuledesai, AGP, for the Respondent No. 1-State.

Mr Shankar P Thorat, for Respondents Nos. 2 & 3.

**Mr Rubin Vakil, with Sanmish Gala, i/b Markand Gandhi & Co, for
Respondent No.5.**

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 17th November 2021**

PC:-

1. This Writ Petition is quite possibly a gross abuse of the process of this Court. It should never have been filed.

2. The Petitioners are individuals, all members of the Pant Nagar Adarsh Cooperative Housing Society Limited. Of the original Petitioners, twelve have withdrawn as Petitioners and have accepted the development. There is an Interim Application No. 225 of 2021 by the developer, Respondent No. 5, to take on record the Consent Terms with these 12 members. It is made absolute.

3. There is another Interim Application No. 1513 of 2020 by the Petitioners which, very late in the day, seeks to amend the Petition. We are not permitting that IA simply because it does not seek to bring on record subsequent events, but instead seeks to cover up what is a fatal defect in the Petition, namely a non-disclosure at the stage of institution of the Petition of the fact of previous proceedings filed by these very Petitioners (or at least some of them) pertaining to the same Development Agreement and the same subject matter. Civil proceedings were initiated by these Petitioners for almost identical reliefs and these have either been withdrawn or dismissed. Previous Writ Petitions have also suffered the same fate.

4. These Petitioners (or such of them are left after the others have filed Consent Terms with the developer) continued to be dissenting members. They go to the extent of saying that the society has not signed any Development Agreement with the 5th Respondent Developer. This is shown to be incorrect. A copy of the Development Agreement is annexed to the Affidavit in Reply. At

page 51, the signatures on behalf of the Petitioners' society are seen on the Development Agreement. The signatures are witnessed. This is a registered document.

5. When confronted with this, Mr Pawar, the learned counsel for the Petitioners, states that the Petitioners have not been given this Affidavit in Reply. That statement is also inaccurate because the Petitioners have filed a Rejoinder. It is then contended that there has been a change in Advocates. That is no excuse. It is certainly not the same as alleging that the Affidavit in Reply was never served. Without the Affidavit in Reply how the Petitioners could have filed an Affidavit in Rejoinder is unexplained.

6. These are sufficient reasons to reject the writ petition.

7. As it happens the building or buildings in question have been demolished. All those who were in occupation have been offered alternative accommodation, including these dissenting members / Petitioners. They have accepted it — whether willing or unwillingly is beside the point.

8. What is now contended is that the Petitioners are the owners of the property. That is untrue. It is then contended that their society has never consented to the Development Agreement. That is also incorrect. The Petitioners are bound by the decision of the majority of the general body of their society.

9. The law regarding dissenting members of Cooperative Societies attempting to hold up redevelopment indefinitely is well settled. We need not reiterate that again here given the facts and circumstances of this particular case, but we will do so, if necessary, in an appropriate case.

10. We find no merit in the Writ Petition. It is rejected.

11. There is a prayer for costs. As a final indulgence, we refrain from awarding costs.

12. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)