

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION (L) NO.2468 OF 2020

IN

NOTICE OF MOTION NO.25 OF 2020

IN

SUIT (L) NO.692 OF 2019

Vinod Dayanand Lad & Ors.

.. Applicants

In the matter between

Galaxy Exotica Co-operative Housing Society

.. Plaintiff

v/s.

Aziz AK Barudgar and Ors.

.. Defendants

Mr. Pradeep J. Thorat, i/by Mr. Aniesh S. Jadhav, for the Applicants.

Mr. Mayur Khandeparkar, with Mr. Gauraj Shah and Ms. Meetal Savla, i/by Chitnis Vaithy & Co., for the Plaintiff.

Mr. Girish Godbole, with Mr. Chirag Balsara and Mr. Amanjhot Anand, i/by Mr. Kaustubh Thipsay and Mr. H.S. Anand, for Defendant No.1.

Mr. Amol B. Jagtap, i/by Mr. Abhijeet Desai, for Defendant No.3-SRA.

Mr. Sagar Patil, with Ms. Yamuna Parekh, for the Defendant-MCGM.

CORAM : A. K. MENON, J.

DATED : 21ST APRIL, 2021.

P.C. :

1. The applicant seeks to be impleaded as party defendants in the suit and in the pending notice of motion filed by the original plaintiff and for a direction to the plaintiff to carry out necessary amendments. The application has been opposed on behalf of the plaintiff but is being supported by original defendant no.1 who is a developer of the land in question. The applicants are eligible slum dwellers as contemplated in Section 2(C)(b) of the Maharashtra Slum Areas (Improvement

Clearance and Redevelopment) Act, 1971, occupy property bearing CTS no.412 at Village Ville Parle, Taluka Andheri District Mumbai suburban admeasuring about 372.7 sq. mtrs. The applicants state that they have not been impleaded as “formal” parties in the suit or notice of motion and that some relief has been granted in the notice of motion without hearing them which adversely affects their rights.

2. It would be appropriate to briefly refer to the suit itself prior to dealing with the impleadment application. In the suit the plaintiff-society seeks a permanent injunction restraining defendant no.1 (“developer”) from entering upon and remaining upon or disturbing a plaintiff’s peaceful occupation and possession on plot bearing survey no.27 hissa no.2 (PT) corresponding to CTS no.411, 411(part 1 to 29) and survey no.27 hissa no.6 (part) corresponding to CTS no.413 totally admeasuring 1242.81 sq. mtrs.(“The plaintiff’s plot”). A further injunction is sought restraining the developer from dealing with or developing a plot of land corresponding to CTS 412 and admeasuring 372.7 sq. mtrs. or from carrying out any demolition or construction activity on the said plot.

3. The plaintiff-society also seeks a decree directing the developer to obtain the occupation certificate in respect of wings A & B of the plaintiff’s building to execute a conveyance in favour of the plaintiff-society in respect of the plaintiff’s plot. It seeks specific performance of all statutory obligations under MOFA and RERA laws by completing the work and handing over all records. The plaintiff also seeks a sum of Rs.2,63,25,000/- as damages and interest thereon. Pending the disposal of the suit, temporary injunctions are sought restraining the defendant from dealing with and developing the plot of land admeasuring 372.7 sq.mtrs. corresponding to CTS 412 or from putting up any construction thereon or utilizing any FSI from the plaintiff’s

plot or a ceasing the plot through the plaintiff's plot. A notice of motion bearing (L) no.1427 of 2019 was moved before this Court on 15th July 2019 when certain directions were issued. An interim arrangement was put in place on that date. Subsequently it appears that during the hearing of the ad-interim application on 17th June, 2019 a statement was made on behalf of defendant no.1 that it could temporarily cease all construction activities on the suit property. The parties were then of the opinion that there was a likelihood of settlement and the matter came to be adjourned. However according to the applicants there was no hearing on merits. The record indicates that subsequently on 16th September, 2019 this court has inter alia passed an order stating that the ad-interim order would continue. Meanwhile on 15th July, 2019, in view of the contention on behalf of the plaintiff that certain walls had been demolished by the defendant no.1 developer, the court permitted the plaintiff to put up some tin-sheets. It is at this stage of the matter that the applicants contended that the order affects their rights and would entitle them to impleadment in the suit.

4. According to the applicants and as canvassed by Mr. Thorat learned counsel appearing in support of the interim application, the plaintiff was completely aware that an order of injunction or status quo with respect to the property would prejudicially affects the rights of the applicants who are eligible slum dwellers. More so since the plaintiff itself had filed a chamber summons bearing (L) no. 804 of 2019 on 21st June, 2019 seeking to implead the previous owners of properties bearing CTS 411 and 413.

5. The grievance of Mr. Thorat is that despite of continuous occupation of the suit property by the applicants, this fact had not been disclosed by the plaintiff. It is

only on 19th December or thereabout that the applicants learnt of the suit and the motion and thereafter moved the court for being impleaded by filing an Appeal bearing (L) no.35 of 2020. The appeal assailed the order dated 16th September, 2019. According to the applicants they could not move the application earlier due to want of funds and owing to the pandemic. On 21st June, 2020 they sought circulation of their appeal which was refused. On the application being renewed in July 2020 the appeal was taken on board. Time was granted to complete pleadings and on 21st July, the appeal court granted leave to file an appropriate application to be joined as a party to the suit and also seeking variation of order 16th September, 2019.

6. Mr. Thorat submitted that as eligible slum dwellers, the applicants were in continuous occupation of their land for more than 35 years. They later handed over possession of their structures to the developer. The property was said to be privately owned land by one John Anthony Francis Miskita and his family members. The developer is believed to have purchased the land under a Deed of Conveyance. The applicants formed an association of slum dwellers known as Malti Bhagat Rahivasi Sangh and appointed defendant no.1 as the developer. The Slum Rehabilitation Authority meanwhile declared the property as a slum rehabilitation area as contemplated in Section 2 (H-B) of the Slum Act and a notification in that respect came to be issued on 3rd January, 2017. A letter of intent followed on 7th January, 2017 by which SRA appointed defendant no.1 developer for the Slum Rehabilitation Scheme on CTS 411 and 413 and contiguous plot no.412 CTS no.412.

7. Under the LOI the defendant no.1 was obliged to provide permanent alternate accommodation to the applicants and in anticipation thereof the

applicants claim to have handed over vacant and peaceful possession of their tenements to the developer in accordance with Regulation 1.16 of the DCR 1991. Individual consent agreements were signed, transit rent was provided for and the defendant no.1 undertook to rehabilitate the applicants within 18 months. Thereafter a revised letter intent is seen to have been issued on 6th June, 2019 in relation to rehabilitation scheme on plot CTS 411 and 413 and CTS 412 and a commencement certificate seems to have been issued on or about 30th October, 2019. According to the applicant in December 2019 upon visiting the site no progress was seen. Prior thereto the applicants had called upon the defendant no.1 to explain the delay in implementation of the scheme. On 19th December, the defendant no.1 informed the applicants of the above suit being filed by the plaintiff and that a statement was made by defendant no.1 that the defendant no.1 would not carry out construction activity. It was informed to the applicants that the court had not heard the merits of the case and was of the view that the matter would be settled between the parties.

8. In the meantime, the statement made by the defendant no.1 continued and no progress could be achieved. The settlement talks also did not fructify. The applicants claim that they were made aware of the order dated 16th September, 2019 only on or about 19th December, whereupon they took steps to immediately move the appeal. The appeal has since been disposed and it is now necessary to hear the interim application as was being canvassed in order to permit impleadment of the applicants in the suit.

9. The interim application is opposed on the basis of a reply of one Parag Raut, treasurer of the plaintiff-society dated 5th September, 2020. The deponent has

contended that even if the applicants are eligible slum dwellers, none of them are to be rehabilitated on the plot bearing CTS no.412 since as per sanctioned plans the rehab building is already been constructed on plot no.411 and others. Some of the applicants are to be rehabilitated in a project known as Omkar Sai SRA CHS Ltd CTS 375, 379 and 384 of Shivaji Nagar which is believed to have been amalgamated with the present scheme. It is contended that the adjoining plot CTS 412 is to be used only for a free sale building and the applicants have no right whatsoever in plot bearing CTS 412. The applicants are stated to be unaffected by the Malti Bhagat Property with which the plaintiff-society is concerned. That having no right or title to any of the structures on plot CTS 412, there is no question of impleading these applicants. It is contended that as slum dwellers they have no right in the property save and except for rehabilitation in the nature of permanent alternate accommodation. The maintainability of the interim application is being questioned because the applicants are not the parties to the suit and they cannot be aggrieved by the interim order which constitutes an arrangement which occasioned upon the defendant no.1 making a statement to court. The order dated 16th September, 2019 assailed in the appeal merely continues an earlier ad-interim arrangement which was also recorded between the parties by exchange of correspondence.

10. In the meantime, the defendant no.1 had not filed any reply in the main motion. The treasurer of the society has averred that although the applicants are 20 in number it has been affirmed only by one person who has not been empowered by any power of attorney. This aspect may not be of much significance since all the 19 other persons have signed the application and it is verified only by the first applicant. The contention of the plaintiff-society is that the applicants have been

put by the first defendant who is attempting to wriggle out of the order operating against him. That order has been made on a statement made on behalf of the first defendant. There is no challenge to that order since admittedly, the statement was made by the defendant of his own volition. It is recorded in correspondence between Advocates and being unable to avoid the said statement and order passed thereon, the defendant no.1 has caused the applicants to move the present application.

11. The affidavit sets out the chronology of events starting from 14th June, 2019. The plaintiff's contention was that the defendant no.1 had taken steps to construct a building in violation of the agreement between the parties and therefore constituted a violation of breach of section 7 and 7A of Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act (MOFA). A bulldozer and other heavy machinery and personnel had been brought to the suit property through the premises of the society against which the plaintiff had protested resulting in the filing of the suit. Various allegations are made against the first defendant of non-compliance with obligations under MOFA with which we shall deal with to the extent necessary. The present application is only for impleadment and therefore I do not consider it appropriate to deal with the various contentions of the plaintiff-society on merits. Suffice it to say that the plaintiff-society claims to be aggrieved by the conduct of the developer, who has attempted to violate provisions of MOFA agreements with the society members and without the consent of the society or its members, commenced construction on the adjoining plot with the result that enormous prejudice is likely to be caused to the plaintiff-society not only by way of the construction work but also by the defendants seeking that

purchasers in the adjoining building proposed to be constructed may seek to be admitted as members of the plaintiff-society.

12. In this background it appears that on 17th June, when the matter was listed, the Advocates for defendant no.1 on instructions made a statement that the defendant no.1 would withdraw their bulldozer and machinery and personnel from the premises of the society and maintain status quo as recorded in certain photographs taken on that day and enclosed with the letter. After the parties met and attempted to resolve differences the matter came to be adjourned on a few occasions. In order to facilitate the settlement, the court also directed the SRA to provide a copy of the file maintained by SRA in respect of the project so that the parties could take an informed decision and in the meanwhile certain interim arrangements were put in place by way of a barricade of tin-sheets as set out in the order passed by the court. In the meantime, pleadings were directed to be completed and the notice of motion itself is now said to be ready for final hearing. The plaintiff-society contends that the applicants have therefore been introduced into the dispute at the instance of the defendant no.1 and there is no occasion to permit impleadment and that the plaintiff's motion be heard on merits.

13. The affidavit of Mr. Raut further states that the defendant no.1 was personally present in court when the order came to be passed on 16th September, 2019. It is therefore submitted that the interim application be dismissed not only on merits but also on grounds of delay. The grievances of the plaintiff-society are reiterated to the effect that the defendant no.1 had failed to obtain the occupation certificate, not conveyed the land, not paid taxes despite collecting maintenance

charges from all the members of the society and is now trespassing upon the land handed over to the society by trying to construct in the adjoining plot. The defendant no.1 has no right to the said land, no access or easementary right either, yet the defendant no.1 has chosen to take law into his own hands, brought in heavy earth moving equipment resulting in the suit. The defendant has not produced any document to show that he had right in the suit property and without the consent of the plaintiff-society have attempted to construct and clubbed a separate and distinct plot of land for the purposes of the scheme thereby causing prejudice to the members of the society. Reliance is placed on clauses 13 and 14 of the Flat Sale Agreements and Sections 7 and 7A of MOFA. The defendant is alleged to have suppressed relevant information in relation to the proposed amalgamation of the plot. Absence of such declaration of intent and it results in there being no consent, at least no informed consent which would enable the defendant no.1 to proceed. According to the plaintiff, the conveyance not having been executed and not having obtained the occupation certificate, the defendant no.1-developer is seeking to exploit and consume balance FSI of the plaintiff's plot on CTS no. 412 and other property said to be believed to have been amalgamated under the slum rehabilitation scheme. It is therefore contended that the IA is liable to be dismissed.

14. According to Mr. Thorat, however, the property bearing CTS no.411, 411(part 1 to 29) and property bearing CTS 413 totally admeasuring 1242.81 sq. mtrs forming part of the dispute were approved for development under a slum rehabilitation scheme. The defendant no.1 had been appointed as developer and necessary permissions were issued to him. The said scheme resulted in an obligation to accommodate eligible slum dwellers who were in use and occupation of the

property admeasuring 1242.81 sq. mtrs. (the larger property).

15. The larger property was then a subject matter of construction of a building for rehabilitating slum dwellers known as Durvankur CHS. The defendant no.1 is said to have rehabilitated slum dwellers using a said larger property and had thereafter undertaken the construction of the plaintiff-society's building. The plaintiff's building was constructed using FSI made available to the defendant no.1 after Durvankur CHS building was constructed and the plaintiff's building was on a plot bearing Survey no.27 Hissa no.6 part corresponding to CTS 413 and all the flats had been sold under MOFA Agreements. In those agreements the developer had disclosed the fact that he was in negotiations to acquire the suit property and that if the suit property had been acquired by the defendant no.1 he would amalgamate the suit property with the larger property and further develop the property as part of the same slum rehabilitation layout. According to Mr. Thorat the MOFA agreements clearly disclose the fact that the developer was in negotiations to acquire the adjoining property and would amalgamate the same with the suit property and in these circumstances the requirements of MOFA was satisfied. That the slum dwellers of Malti Bhagat Rahivasi Sangh had appointed the developer after the property had been acquired by the developer from John Miskita and his family members. That on 3rd January, 2017 the SRA had declared the property as a slum rehabilitation area and therefore Annexure II prepared included all eligible slum dwellers including the applicants who are required to be rehabilitated.

16. Individual agreements were thereafter entered into by the applicants with the developer and the applicants had simultaneously handed over vacant and peaceful

possession of the suit property. The revised LOI issued in June 2019 required the developer to demolish the slum structures erected by the applicants on the suit property and upon demolition, SRA had approved and sanctioned plans for building upon the suit property. After the permissions were granted, the society had filed this suit alleging violation of Section 7 and 7A on the basis of the amalgamation. This is only an excuse and the plaintiff-society was well aware of the likelihood of amalgamation even as early as the dates on which the agreements had been executed by their members with the defendant no.1. According to Mr. Thorat, the applicants are proper and necessary parties having been in continuous use and occupation of the suit property for 35 years. The applicants have been deliberately left out and they have a direct interest in the suit property. Thus, both proper and a necessary party.

17. It is submitted that the society has no right title or interest in the suit property and therefore could not have obtained an ad-interim order. The amalgamation was necessary since the suit property was landlocked and access to the suit property was only available through the plaintiff's plot. This was well known to the plaintiff-society, who had waited till the structures of the applicants were demolished to file the suit. That no injunction could be granted in the circumstances. No declaration has been sought, no possessory relief has been sought and hence a suit simplicitor for injunction would not be maintainable. As far as the allegations of violations of Section 7 and 7A of MOFA are concerned, Mr. Thorat submitted that clause 3 and 4 in the plaint itself admits to the fact that the promoters, developers were under negotiations to acquire the adjoining property and would amalgamate the same with the larger property and obtain an amended LOI. Clause 4(e) of the plaint is specific

in its reference to the developer's right to amalgamate the third property and obtain an amended LOI that these recitals in the agreement were also clear. There is an express disclosure of the proposal to amalgamate and therefore the plaintiff's members by signing the MOFA agreements had expressly agreed to the contents.

18. As far as the law on the subject is concerned Mr. Thorat submitted that after the amendment to Section 7 and deletion of the words "*or constructs any additional structures*" and replacing it with the words "*or additions in the structure of the building*". Section 7A was also added to MOFA and a conjoint reading of section 7 and 7A would make it clear that the requirement of taking prior consent of the flat holders arises only when an addition to the structure of the building is to be carried out and not to an additional structures are being constructed. Reference is made to the decisions of *Jayantilal Investments v/s. Madhur Vihar CHS and Madhur Vihar CHS v/s. Jayantilal*¹. My attention was also invited to the decision in *Kalpita Enclave CHS v/s. Kiran Builders Pvt.Ltd.*² *Bajranglal Eriwal & Ors. v/s. Sagarmal Chunilal & Ors.*³ and it is submitted that on perusal of the record as available it is clear that the developer had informed the society of his intention to amalgamate with the adjoining plot being the suit property with the larger property and in that sense informed consent was not questionable. The society and its members were certainly aware of the proposed developments.

19. According to the applicants, the plaintiff-society has no right title interest in the suit property and there is no question of granting any injunction in relation to the work to be carried out there at which will prejudice the applicants. He therefore

¹ (2010)6 BCR 517

² (1986) Mah.L.J. 110

³ (2008) 6 BCR 887

submits that he is entitled to be impleaded as a party. An attempt is also been made to submit that the society's reliance on a letter at Exhibit KK to the affidavit in reply to contend that the applicants are no longer entitled to be rehabilitated on the suit property is of no consequence and that the contention of the society that the applicants have already been permanently rehabilitated is incorrect and is made only to prejudice the applicants case. That the applicants are still residing in transit accommodation. They are yet to be rehabilitated permanently and the applicants are being paid transit rent by the developer. Thus, the current situation is that drawing of lots is yet to take place under the auspices of the SRA and in the absence of compliance of all these requirements, there is no question of their being permanently rehabilitated. So called clubbing letter seeking to rehabilitate some of the members in Omkar Sai CHS is being misused by the plaintiff to contend that all the applicants have been rehabilitated. The contention of the applicant is to the effect that the structure under the Omkar Scheme has been raised only to the plinth level and is nowhere near completion. The applicants have therefore not being permanently rehabilitated.

20. In these circumstances, it is contented that the so called clubbing has never been agreed to by the applicants and the clubbing of their Scheme with the Omkar Scheme is not justifiable. The clubbing letter or other permissions issued by SRA cannot defeat the rights of the applicants and it is necessary that the applicants be permitted to implead in the suit and agitate their case in the present suit. The learned counsel further submitted that the present suit is also barred under Section 42 of the Slum Act and no injunction could have been granted and should be granted in this case. He therefore seeks to question the maintainability of the suit

itself. The applicants therefore state that the intention of the society in instituting the suit and its timing is merely to delay the rights of the applicants who are entitled to their building be constructed on the suit plot which is admittedly landlocked and to deprive the applicants of their right. That in fact the suit has been filed on behalf of the society only to “extort amounts of over 5.6 crores” and that it demand to this effect had been made during the Annual General Meeting of the society. One wonders how the applicants have knowledge of these facts and this is indicative of a certain amount of co-operation between the defendant no1 and the applicants. According to the applicants the members of the society are seeking to satisfy their monetary interests and deprive the applicants of their entitlement. It is also contended that the balance of convenience is in favour of the applicants and it is incumbent that they be parties to the suit so as to demonstrate the falsity of the plaintiff’s case. For these reasons, the applicants seek impleadment.

21. Opposing the application on behalf of the plaintiff’s, Mr. Khandeparkar submitted that the applicants who are occupants of one Malti Bhagat Chawl located on plot bearing CTS no.411 only have the right of rehabilitation, their hutments had already been demolished and under the scheme they had no right other than that of rehabilitation. He relied upon the decision of this court in *Omsai Darshan CHS Ltd. vs/. State of Maharashtra*⁴ in support of his contention. He submitted that the letter of intent reveals that eligible slum dwellers of Malti Bhagat chawl were in total of 19 and these 19 persons were to be accommodated in the rehabilitation building of Durvankur CHS. Perusal of annexure II annexed to the affidavit in reply reveals that there are about 101 eligible slum dwellers out of which 19 have residential accommodation, 19 slum dwellers having residential accommodation are part of the

⁴ (2007) 1 BCR 476

Malti Bhagat chawl. 82 members are part of the Durvankur CHS which includes 76 residential users and 6 commercial units. Perusal of the LOI annexed to the affidavit in reply reveals that the Durvankur rehabilitation building will have about 98 units of which 89 are residential units, 6 are commercial units and 3 amenity units. The remaining 8 units are believed to be for sale. Thus the rehab building has a total of 106 units. There is a separate sale building also proposed and that will be constructed on property bearing CTS no.412 and that will possibly have 35 units for sale. Meanwhile the SRA has granted an occupation certificate on 26th July, 2019 for 106 units of Durvankur building which includes the rehabilitation component and the free-sale component. This building in respect of which occupation certificate has already been issued, is intended to rehabilitate the occupants of the Durvankur from CTS 411 and also the eligible 19 slum dwellers from Malti Bhagat Chawl. Thus, on an overall view out of 95 slum dwellers who are entitled for residential accommodation 89 will be accommodated in Durvankur building, 6 will be housed in Omkar Sai building. This has resulted from amalgamation and clubbing of two separate schemes which will enable them to transfer rehab components from one scheme to another and this is evident from the affidavit in reply dated 17th June, 2019. When this is analyzed it becomes apparent that the applicants have no other right in the property proposed to be constructed on CTS 412. The applicants have already been provided accommodation on building on property CTS 411 and the Omsai scheme. The defendant no.1 proposes to construct a building on plot CTS 412 which will consist of only sale component and the applicants have no interest therein. According to the plaintiff-society, the defendant no.1 is attempting to amalgamate plots CTS 412 and the scheme known as Omsai with CTS nos.411 and 413 thereby attempting to exploit balance FSI belonging to

the plaintiff-society and its members without the consent of the plaintiff. It is stated that the record shows that no permission has been obtained to amalgamate these plots or erect an additional building on CTS 412 with access from the plaintiff's plot bearing CTS 413. This was not part of the original sanctioned plan at all. The defendant no.1 as of now in breach of statutory obligations to execute conveyance of the land in favour of the plaintiff and it is to avoid this obligation and after the status quo that the first defendant has now caused the application to be moved. In these circumstances it is contended that the application is liable to be rejected.

22. Having heard the rival contentions, prima facie I find that the defendant no.1 appears to be supporting the applicants for reasons that are not difficult to see. The defendant no.1 is seeking to develop the suit plot using the access from the society's plot which is required to be conveyed to the society. Conveyance not having been effected and on account of various other grievances that the plaintiff has set out in the plaint, the plaintiff is in my view entitled to agitate their cause notwithstanding the contention that Section 79 of the RERA would come in the way. The suit essentially seek to enforce the obligations of a developer and that the Maharashtra Ownership Flats Act. Prima facie, there is no absolute bar in the plaintiff filing the present suit to enforce its MOFA entitlement. The contentions on behalf of the plaintiff that the applicants as slum dwellers are only entitled to rehabilitation and nothing more is the correct position in law. They have no right or title in the land whether undivided or otherwise. They are only entitled to be put back in possession of tenements to be constructed and under the scheme. Prima facie there is substance in the plaintiff's contention that the applicants have already been allotted/agreed to be provided accommodation elsewhere. Out of 101 slum dwellers 95 have been

accommodated in the rehab building and the remaining 6 will be accommodated in the Omkar Sai CHS. The plaintiff's contention that plot no.412 is only a sale building has substantial merit inasmuch as if plot 412 is to house a sale building there is no question the applicants being entitled to rehabilitation on the said plot and a structure to be put up on the said plot. Reliance placed on the plan at page 459 of the compilation of the record and proceedings in the IA does reveal that plot 412 is intended to put up a sale building and if that is so there is no question of the applicants claiming any right to reside in rehabilitating building being put up at the said plot. On a perusal of the affidavit in reply filed on behalf of the plaintiff, paragraph 3B contains a specific deposition of the treasurer of the society that none of the applicants are entitled to be accommodated on plot bearing CTS 412 that as per sanctioned plans CTS 412 is to be used to put up a sale building alone and that the appellants have not shown any right to be accommodated in the sale building or on plot 412.

23. In view thereof, I have perused the averments in the affidavit of applicant no.10 on behalf of the applicants in rejoinder he states that the contention of the plaintiff that they are already rehabilitated is not correct since they are still residing in transit accommodation at addresses given in the affidavit. They are also being paid transit rent. According to the deponent the use of the expression "permanently rehabilitated" is incorrect. Moreover, Omkar Sai CHS has only reached only plinth level and there is no question of any of the applicants having being rehabilitated there at. The deposition is to the effect that there cannot be any rehabilitation in Omkar Sai without the express consent of the applicants concerned. This rejoinder is filed obviously after going through the affidavit in reply. The applicants have

admitted in the rejoinder that they are unable to fathom the meaning of the clubbing letter and whether permission has been granted for clubbing as contemplated. On receipt of appropriate information regarding clubbing they propose to take necessary steps in law. This is clearly indicative of the fact that the applicants will have to adopt their own proceedings should they seek to contest what the developer intends to do by clubbing the different plots and projects thereat. The rejoinder goes on to state that even if the SRA approves the clubbing and in the event Omkar Sai is not completed the applicants will continue to have a right in plot 412 and for this reason it is contended that they are necessary and proper parties to the suit. The other contention of the applicants is that the plaintiff has no right or no locus to maintain the suit in regard to the suit property. Their only claims lie in relation to the building occupied by the society and not this adjoining plot. That being landlocked, the plaintiff had been at undue advantage of the fact that access is to be provided by the plaintiff. What is material to note is that there is no denial of the various detailed averments in paragraph 3 of the reply for ease of reference paragraph 3(b) of the reply is reproduced below;

“ 3(b). In any event, without prejudice to the above, even if there are any eligible slum dwellers, none of them they are to be rehabilitated on the adjoining plot bearing CTS 412 going as per the sanctioned plans. They are, as per the plans, required to be accommodated in the rehab building already constructed on the plot no.411 and the others in are to be rehabilitated in the Omkar Sai Project situate at Omkar Sai SRA CHSL, CTS 375, 379 to 384 Shivaji Nagar, Sai Temple, Vile Parle-East which has been purportedly amalgamated with the present scheme. The adjoining plot of land bearing CTS No.412 is as disclosed from plans put up and sanctioned is to be used only for free sale building. The applicants have not shown any semblance of a

right or interest to the adjoining plot of land bearing CTS no.412 or the plot on which the existing structures as situate. In any event, the applicants are not concerned with the suit property or the Malti Bhagat property.”

24. In view of the fact that there is no denial of this specific averment, it is obvious that the applicants are either agreeing with the contentions in the said paragraph or they are unsure. In either view of the matter there is no reason for impleading them in the present suit. The case set out by the applicants in the application and as canvassed before me does not justify the impleadment of the applicants in the suit. The plaintiff as *dominus litis* decides the parties against whom they seek reliefs. The plaintiff seeks no relief against the applicants who have not prima facie demonstrated that their interests are being affected by this suit. The plaintiff's grievance is with the developer and probably the SRA in this view of the matter, there is no reason for the applicants to be impleaded in the present suit.

25. One other aspect that requires to be considered is that in order dated 21st May, 2019 the SRA appears to have considered the subject of clubbing of two schemes. Scheme One which pertains to the plots upon which Omkar Sai SRA CHS Ltd. is to be constructed, amalgamated with non slum plot bearing CTS 381 the development in this case is to be carried out by M R Realtors which is admittedly a sister concern of the defendant no.1 Galaxy Realtors. The society formed there is the Omkar Sai (SRA) CHS Ltd. Scheme Two concerns the Durvankur CHS Ltd. and Malti Bhagat Chawl Rahivasi Sangh proposed the scheme here pertains to CTS plot bearing CTS 411, 411 /1 to 29, 413, 413/1 to 16 of village Vile Parle as well as contiguous plot CTS 412 with which we are concerned in the present suit reveals

that details of the clubbing report had been forwarded to the CEO SRA for an endorsement. The application has since been considered and in the meantime, DCPR 2034 having been notified and implemented the clubbing of the two slum rehabilitation schemes were considered. The architect is common and had stated that M R Realtors a sister concern of Galaxy Realtors. Thus a common Architect records that the sale component from Scheme Two is propose to be transferred to Scheme One in lieu of consumption of permissible FSI and shifting of existing rehab tenements from Scheme Two that is from the Durvankur SRA CHS Ltd. Certain premiums were mentioned as payable. Tenements have been considered in both of Omkar Sai SRA CHS Ltd. and Durvankur. It records that the plot of Malti Bhagat has been amalgamated. Annexure II discloses a total of 21 structures were found out of which 14 were found eligible, 5 were later certified by Dy. Collector SRA. As a result 19 slum dwellers are eligible for rehabilitation out of 21 structures. There is a tabulated form showing the total number of structures to be provided 82 at Durvankur and 19 at Malti Bhagat making a total of 101. In view of the proposed clubbing further tabulated statement relating to Omkar Sai rehab building and Durvankur rehab building show that out of 101, 95 have been accommodated in Durvankur building in their rehab due to the application of DCPR 2034, 35 additional premises as residential premises are available for sale. The report records that in the tenements' statement the architect has proposed clubbing of 30 units including 6 numbers of rehab tenements and 11 provisional project affected persons and 13 others from Durvankur to be clubbed with Omkar Sai. In this view of the matter, the CEO SRA appears to have made an endorsement which appears to read as follows;

*“As proposed. However, Pl. see that the approval is throughout
in consonance with DCPR 2034.”*

26. In view thereof, prima facie there may be approval of this clubbing. I clarify that these are prima facie views since these aspects do not arise for consideration on merits in this application and will not prejudice rights, if any, of the plaintiff, defendants or the applicants. It does appear from all of the above that there is no case for the applicants being impleaded in the present suit.

27. Furthermore, there is substance in the plaintiff's contention that the suit seeks to restrain the defendant no.1 developer from entering upon and disturbing the plaintiff's occupation of CTS 411 and 413 and dealing with and developing CTS 412 without their consent. Secondly, they seek occupation certificate in respect of the society's buildings and a conveyance in respect of the plots bearing CTS 411 and 413. The plaint seeks performance of MOFA obligations of the developer and for damages. The chamber summons for impleading the original landowner and the original developer is also stated to be pending. In my view it is always open to the applicants to agitate their case as against the developer and as against the plaintiff-society, if they so desire by filing their own suit. I am of the view that the plaintiff-society cannot be compelled to implead applicants. In view thereof, I pass the following order;

- (i) IA no.2468 of 2020 is dismissed.
- (ii) No orders as to costs.
- (iii) The dismissal of this IA, will not prevent the applicants from seeking any relief against the parties in this suit if so advised

in independent proceedings.

(A. K. MENON, J.)