

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1289 OF 2021**

New Pragati Welfare Society through]
Vice Chairman and authorized Signatory]
Sunil Parsekar] **Petitioner**
Vs.
State of Maharashtra through Government]
Pleader and others.] **Respondents**

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Mr. Rajesh Khobragade a/w Mr. Dharmesh Panchal a/w Mr. Sunil Yadav, for Petitioner.

Mr. Milind More, A.G.P, for Respondent-State.

Mr. Vijaysinh Thorat, Senior Advocate i/b Shobhit Shukla, for Respondent No.3.

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**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 16th SEPTEMBER, 2021.

P.C.

1. Heard learned Counsel for the parties.
2. By this petition under Article 226 of the Constitution of India, the petitioners are seeking direction against respondent No.2 to take necessary action against respondent No.3-Developer upon failure to comply the terms and conditions of the permission granted to them to develop the property known as “Siddhi Chawl

No.6” situate at Bhawani Shankar Road, Dadar (West), Mumbai – 400 028.

3. Main grievance of the petitioners is that though respondent No.3-Developer agreed to pay monthly compensation to the tenants, they failed and neglected to pay the same.

4. Learned Counsel appearing on behalf of the petitioners submits that though they stated in the petition that more than a sum of Rs.4,00,000,00/- (Rs. Four Crores only) is due and payable in respect of 50 residential tenements and 3 non residential tenements of the said project, actually as per their contention more than a sum of Rs.6,00,000,00/- (Rs. Six Crores only) is due and payable. He submits that it is very difficult for the members of the petitioners to survive without monthly compensation. Hence, in the interest of justice, this Hon’ble Court be pleased to direct respondent No.3 to pay monthly compensation and clear the arrears of monthly compensation immediately, failing which, let appropriate action be taken by MHADA against respondent No.3.

5. Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 submits that because of financial crunches, it remained on their part to clear the arrears of monthly rental compensation. He further submits that now respondent No.3 decided to submit a fresh proposal as per 33 (9) of DCPR 2034 so that all the tenants can get additional area approximately 150 square feet (carpet area). He submits that to that effect respondent No.3 made a statement in paragraph 27 of their affidavit in reply

dated 5th August, 2021 which reads thus;

“27. I say that as per the new proposal of Government of Maharashtra that if the Respondent put up the proposal under 33 (9) of DCR then, the tenants shall get a total Permanent Alternative Accommodation to the extent of Approximate 450 Sq.ft. Carpet Area. I say that as per the present development regulation under which the Respondent are developing, the tenants are only getting an area of 310 Sq. ft (Carpet Area). I say that this Respondent is proposing to make a fresh proposal under 33 (9) of DCR wherein the tenants shall get total area Approximate of 450 Sq. ft. (Carpet Area) as Permanent Alternative Accommodation i.e Approximate 150 Sq. ft (Carpet Area) more than the present scheme under which the Respondent is re-developing the property in question”.

6. Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 submits that as directed by this Court by earlier order, they undertake to pay to the petitioners monthly rental compensation on or before 10th day of each month. He submits that for the month of September, 2021, they already issued the cheques. He further submits that if any cheque is dishonoured for any reason whatsoever may be and if they get intimation from the said tenant, they will clear the said amount immediately i.e within 10 days. He further submits that for further monthly compensation they will pay the same to the tenants by Real-Time Gross

Settlement (RTGS) and/or National Electronic Funds Transfer (NEFT). He submits that for that purpose, they will require full details from each member of the petitioner i.e their full name, bank account number, description of the Bank, branch, IFSC number etc. He further submits that respondent No.3 undertakes to file a proposal under 33 (9) of DCPR 2034 within four months to the High Power Committee. To that effect, respondent No.3 made a statement in their additional affidavit in reply dated 14th September, 2021. He further submits that even respondent No.3 made a statement that they will clear all pending arrears payable to the petitioners within particular time. In support of this contention, Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 relies upon paragraph 7 of their affidavit in reply dated 14th September, 2021 which reads thus;

“7) I say that looking to facts and circumstances and as directed by the Hon’ble High Court on 11/08/2021 Respondent no.3 has prepared a Payment Plan for the Pending Arrears of the Affected Tenants is as under;

I. Respondent no.3 will submit the proposal under 33 (9) (CDS) of DCPR 2034 in 4 months to High Power Committee (HPC) after designing of Subject Property as per 33 (9) (CDS) of DCPR 2034 will be completed.

II. Respondent no.3 will immediately submit the Proposal to Mumbai Municipal Corporation of Greater

Mumbai for further approval of Plans, IOD, CC once High Power Committee (HPC) will grant Approval for said Proposal under 33 (9) of DCPR, 2034.

III. Respondent no.3 will start the Construction work of said project in 30 days after all the approval is granted by the concerned authorities.

IV. Respondent no.3 will complete the said project in 36-42 months from the date of start of Work.

V. Respondent no.3 agreed to clear all the pending arrears of Rs.4,23,13,050 (Four Crores twenty three lakhs thirteen thousand and fifty rupees) after three months from starting of work of the said project in seven equal installments (Every Six Months) till completion of work (36-42 Months) to all the Original Tenants as per records.

VI. Respondent no.3 will continue to pay the Current monthly Rent as directed by the Hon'ble High Court Bombay on 11/08/2021 and as undertaken by The respondent no.3 in Affidavit in Reply filed by the Respondent no.3 in the above Petition".

7. Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 submits that respondent No.3 is ready and willing to construct a building to accommodate the members of the petitioners on temporary basis till the project is completed with

permission of MHADA and other Competent Authority. He submits that for that purpose, they require consent from each and every member of the petitioners. He submits that in view of these facts, the Authority may be directed that if they get such proposal, they must clear the same immediately.

8. Considering the submission made by Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 and grievance of the petitioner that respondent No.3 failed to pay their monthly compensation, we are of the opinion that on the basis of a statement made by Mr. Thorat, learned Senior Counsel appearing on behalf of respondent No.3 and affidavits filed by them, petition can be disposed of by consent of the petitioners and respondent No.3. with liberty to the petitioners to move this Court in case of any difficulty about the payment of monthly compensation. Learned Counsel appearing on behalf of the petitioners submits that representative of the petitioners is present in the Court and he has given consent. Hence, the following order;

: ORDER :

- (a) The petitioners are directed to provide respondent No.3 within two weeks from today bank details of each and every member of the petitioners for transferring their monthly compensation through RTGS and/or NEFT;
- (b) Respondent No.3 is directed to pay monthly compensation/rent to the petitioners' members through RTGS and/or NEFT on or before 10th day

of each month after getting bank details of the petitioners' members;

- (c) If there is any default on the part of respondent No.3 in payment of monthly compensation/rent, liberty is granted to the petitioners to move this Court by filing appropriate proceedings for their grievance;
- (d) Respondent No.3 is directed to clear the petitioners' arrears of rental compensation as stated in paragraph 7 of the affidavit in reply dated 14th September, 2021, without any default.
- (e) If the proposal is submitted by respondent No.3 under 33 (9) of DCPR, 2034 concerned Authority is directed to clear the same on it's own merits as early as possible in the interest of justice;
- (f) Once the proposal is sanctioned and all the permissions are received from the competent Authority including Corporation, respondent No.3 to start the work of construction of the project immediately with intimation to the petitioners in writing;
- (g) Respondent No.3 is permitted to submit his proposal to the petitioners for providing temporary

alternate accommodation to the petitioners' members. If said proposal is submitted, the petitioners to consider the same and inform the decision thereof to Respondent No.3 within two weeks from the date of receipt of the said proposal;

- (h) All contentions of the parties are kept open;
- (i) With these directions, by consent writ petition stands disposed of;
- (j) No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]