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

**WRIT PETITION NO. 3544 OF 2019
WITH
INTERIM APPLICATION NO. 1792 OF 2020
IN
WRIT PETITION NO. 3544 OF 2019**

BHAU ALIAS GANJIBHAI P. PATEL & ORS. ..PETITIONERS
vs.

THE MAHARASHTRA HOUSING AREA
DEVELOPMENT AUTHORITY & ORS. ..RESPONDENTS

Mr. Pradeep Thorat a/w. Mr. Santosh Pathak a/w. Mr. Nimish
Lotlikar i/b. Santosh Pathak for petitioners.
Mr. P.G. Lad a/w. Mr. Akshay Shinde a/w. Ms. Priyanka Naik for
respondent Nos. 1 and 2.
Mr. Karl Tamboly a/w. Mr. Aryan Srivastava a/w. Ms. Jasmine
Kachalia i/b. Wadia Ghandy & Co. for respondent No.8.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 9, 2021

P.C.:-

Heard learned counsel for the petitioners.

2. The petitioners are occupants of ten commercial premises in building No. 161 of respondent No.3 - Samta Nagar Co-operative Housing Societies Union Limited. Learned counsel for the petitioners submits that in the respondent No.3 - Samta Nagar Co-operative Housing Societies Union Limited there are as many as 166 buildings. Consolidated scheme of redevelopment

was proposed in respect of building No.1 to 160. The redevelopment commenced in respect of these buildings. Sometime in the year 2017 it appears that the society in respect of building No.161 decided to be a part of the redevelopment. Accordingly, the majority of the members passed a resolution to that effect.

3. Learned counsel for the petitioners assailed the impugned order passed by the respondent No.2 on various grounds. According to him, firstly the redevelopment work commenced in respect of building No. 161 in contravention of Section 95A of the Maharashtra Housing and Area Development Act, 1976 ('the MHADA Act' for short) without a 'no objection' of MHADA. The next contention of learned counsel for the petitioners is that six of the petitioners have 10 commercial premises between them and these commercial premises in the building No.161 were facing the main road. In the redevelopment proposed, the petitioners would be relocated at a dead end of the plot which does not have proper access. The said premises will not be commercially viable.

4. The next contention of learned counsel for the petitioners is that there is no development agreement in respect of building No. 161. Shri Thorat further submits that the order passed by the

respondent No.2 is not a reasoned order and none of the contentions raised by the petitioners are considered.

5. Mr.Tamboly, learned counsel appearing for the respondent No.8 and Mr. Lad, learned counsel appearing for the respondent Nos. 1 and 2 supported the impugned order.

6. Heard.

7. The building No. 161 comprises of 53 members. Out of the said 53 tenaments, 39 are residential and 14 are commercial. The petitioners are in occupation of 10 shops. So far as four other commercial shops are concerned, the tenants have accepted the alternate accommodation and already shifted to the alternate accommodation. Even in respect of 39 residential allottees they have accepted alternate accommodation and have vacated the building. During the pendency of this Petition it is informed that the order passed under Section 95A of the MHADA Act has been implemented and the petitioners have been evicted from the said premises whereafter the building has been demolished.

8. In view of the subsequent developments the petitioners have carried out substantial amendment in the Petition.

9. I am not inclined to interfere with the impugned order for the following reasons. Firstly it is seen that in respect of the building No. 161 the majority of the occupants have accepted redevelopment and shifted to alternate accommodation. 39 residential tenants out of 53 have already shifted to the alternate accommodation. Even amongst commercial tenants, four of the commercial tenants have accepted the alternate accommodation allotments. Learned counsel for the respondent Nos. 1 and 2 and respondent No.8 submitted that there is NOC of MHADA in respect of building No. 161. Building No. 161 has been added to the proposed redevelopment. NOC by the MHADA to include building No. 161 is revised on 12/7/2016. I, therefore, do not find any substance in the contention of learned counsel for the petitioners that there is no NOC of MHADA.

10. The next contention of Shri Thorat is that there is no development agreement. It is pertinent to note that apart from the society being signatory to the agreement, even individual agreements are on record that the tenants are willing to be part of the redevelopment. Almost 39 residential tenants and 4 commercial tenants out of 53 tenants have accepted the redevelopment. In this view of the matter, only for the sake of six of the petitioners who are in occupation of 10 commercial shops,

it is not appropriate to stall the redevelopment as vast majority of tenants have already vacated and shifted to alternate accommodation.

11. The next contention of Shri Thorat is that the impugned order passed under Section 95A of the MHADA Act is not a reasoned order. I find substance in the contention of Shri Lad for MHADA that action under Section 95A is not meant for adjudication of the rights of the parties for what is provided for is a summary eviction. Suffice it to observe that the petitioners have been heard and as majority of the members have accepted redevelopment, I do not find this is a fit case to interfere with the impugned order on this ground.

12. Further, the respondent No.8 has offered the alternate premises even to the petitioners. The petitioners have not shifted on the ground that the same are not road facing and that the occupation certificate is yet to be issued in respect of the premises. So far as contention that the commercial premises are not convenient, it is seen that the shops which are proposed to be allotted to the petitioners are facing layout road and the same have access from both sides of the common road. In this view of the matter, I do not find any substance in this contention.

13. So far as the aspect of entitlement of the rent on account of building not having occupation certificate is concerned, the petitioners' right to claim rent by resorting to appropriate proceedings is kept open. I may not be understood to have expressed any opinion so far as claim of the petitioners for rent is concerned and the issue is kept open.

Diksha
Rane

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14. The Writ Petition is dismissed. Interim Application is disposed of.

(M.S.KARNIK, J.)