

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 15416 OF 2021**

Kashinath Bhadu Redkar & Ors ...Petitioners
Versus
The Deputy Chief Engineer ...Respondent

**Mr Bhushan Deshmukh, i/with Mayur Rita, i/b Dhiren H Shah, for
the Petitioners.**
Ms Aparna Kalathil, i/b PG Lad, for Respondents Nos. 1 and 2.

**CORAM: G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 15th November 2021

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1. Rule. Rule made returnable forthwith. By consent, taken up for hearing and final disposal.
2. The Writ Petition challenges an order (page 37) dated 22nd October 2020 issued by the contesting Respondents, namely, Maharashtra Housing Area and Development Authority (“MHADA”).
3. The facts lie in a very narrow campus. MHADA is the owner of a tract of land Survey No. 113, CTS No. 356 (Part) of Kannamwar Nagar, Mauje Hariyali, Vikhroli (East), Kurla, Mumbai 400 083.

4. MHADA conveyed an office building No. 1/2/3 (a ground floor structure) to the Petitioners. About this, there is no dispute. On 24th December 2009, MHADA and the Petitioners registered a Sale Deed as also Lease Deed. MHADA sold the building to the Petitioners and leased the land beneath the structure to the Petitioners. Petitioners Nos. 1 and 3, along with one Shashikant Bapu Khadpe, executed a Development Agreement with Respondent No. 3 M/s. Kunal Omkara Developers (“**Kunal Developers**”). In 2011, Kunal Developers appointed Respondent No. 9, one Nitin Gunjal (“**Gunjal**”) as the architect for the project.

5. For the reasons that are not immediately relevant, nor in controversy, on 19th September 2017, the Petitioners terminated this Development Agreement with Kunal Developers. They issued a notice to this effect through their Advocates. There is a separate dispute between the developers and the Petitioners regarding this termination. Correspondence in this regard continued through 2017. Finally, on 21st December 2017, the Petitioners issued a public notice in two local newspapers giving notice of the termination of the Development Agreement as also of the revocation of the Power of Attorney to the Petitioners granted the developer.

6. A few years went by. The Petitioners ultimately decided to develop the property, i.e. the building, themselves, and, on 29th January 2019, appointed Gunjal once again as the architect. The difference was that this was now a self-re-development by the Petitioners as building owners. The Petitioners informed MHADA on 14th February 2019 that they had terminated the Development Agreement with Kunal Developers. On 22nd January 2010, the

Petitioners submitted an indemnity and undertaking to MHADA once again noting the factum of termination and reiterating that the Petitioners themselves would be carrying out the development.

7. This brings us to the impugned notice of 22nd October 2020. That has been issued by the Executive Engineer of MHADA. It proceeds on the footing that there are two different proposals for redevelopment of the layout. It is specifically noted in the impugned order that there are internal disputes between the Petitioners and the erstwhile developer (Kunal Developers). It is also noted that since 2006 there has been no progress for 14 years until 2020 and that the Board has issued a no objection certificate in 2012. There is also an IOD of the MHADA of 2017.

8. Unfortunately, the Executive Engineer seems to have entirely missed the issue at hand. The Executive Engineer quite impermissibly directed the parties to sit together to arrive at an amicable settlement. This is not the remit of the Executive Engineer. He has not an adjudicating authority to decide civil disputes. That is squarely the province of a Civil Court of appropriate jurisdiction. But the order goes further. It then says that if the disputes are not resolved, a Suit may be filed in a Civil Court and further action may be taken according to the decision of the Court. It is for this reason and this reason alone that the Executive Engineer declined to consider the redevelopment proposal.

9. This order cannot be sustained. There is no dispute that the Petitioners are the owners of property, i.e. the building. It is well

settled in law that one of the incidents of ownership is to enjoy the fruits of development of the property. The developer itself has acquired no title to the property merely by virtue of the Development Agreement, one that in any case, has been terminated. If the developer has any dispute with the owners, appropriate proceedings may be filed under the terms of the Development Agreement or as a civil action in a Court of appropriate jurisdiction. MHADA cannot enter into this aspect of the matter at all. It has to consider the application that is before it.

10. It is submitted before us that the NOC of the previous architect has not been obtained. That is no reason to deny an owner the right to redevelop his own property. In any case, the same architect, Gunjal, has been re-appointed by the Petitioners. There is no question of a NOC. Only the project proponent has changed from Kunal Developers to the Petitioners. MHADA is in no way concerned with who appoints the architect.

11. In this view of the matter, the impugned order of 22nd October 2020 is quashed and set aside. The Petitioners will place a revised proposal for redevelopment of the structure before MHADA within two weeks from today. MHADA will consider this application on merits without raising a question of any pending dispute between the previous developer and the Petitioners and without insisting on an NOC from Ellora Project Consultants Pvt Ltd. MHADA will consider and decide the application expeditiously and in any case before 31st December 2021.

12. The Writ Petition is disposed of in these terms. In the facts and circumstances of the case, there will be no order as to costs.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)