

Housing Society Ltd through C. Shanmugaraj

Versus

Shree Umiya Builders and Developers & Ors

...Respondents

AND

WRIT PETITION (L) NO. 27001 OF 2021

WITH

COURT RECEIVER'S REPORT NO. 487 OF 2021

IN

WRIT PETITION (L) NO. 27001 OF 2021

Shree Umiya Builders & Developers

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Mr Rohan Sawant, *with Anuj Jhaveri, i/b PSL Advocates & Solicitors, for the Petitioner in WPL/578/2019.*

Mr Rohan Sawant, *with Anuj Jhaveri, i/b PSL Advocates & Solicitors, for the Petitioner in WPL/2700/2021.*

MJ Reena Rolland, *for the 4th Respondent in WPL/578/2019 and WPL/27001/2021.*

MJ Reena Rolland, *for the Petitioner in WP/1561/2021 and WP/2104/2021.*

Mr Rohan Sawant, *with Anuj Jhaveri, i/b PSL Advocates & Solicitors, for Respondent No.1 in WP/2104/2021.*

Mr Amol Jagtap, *with Surbhi Agrawal, i/b Abhijeet Desai, for Respondent No.2 (SRA) in WPL/578/2019.*

Mr S Karmakar, *AGP for State in WP/1561/82021 & WP/2104/2021.*

Mr Dushyant Kumar, *AGP in WPL/578/2019.*

Mr MA Sayed, *AGP in WPL/2700/2021.*

Mr Vijay D Patil, *for Respondents Nos. 2 and 3 in WP/1561/2021, WP/2104/2021 and WPL/2700/2021.*

Ms Rupali Adhate, *for Respondent-4-MCGM.*

Mr Rohan Savant, *with Anuj Jhaveri, i/b PSL Advocates & Solicitors, for Respondent No.5 in WP/1561/2021.*

Mr DN Kher, *Court Receiver with Mr SK Dhekale, OSD, Court Receiver's office present.*

Mr Ajay Malvankar, *Section Officer to the office of the Court Receiver, present.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 20th December 2021

PC:-

1. Mr Sawant on behalf of the Petitioner in Writ Petition (L) No. 27001 of 2021 tenders an Affidavit of one Ganesh Pangale, an authorised representative. The Affidavit is taken on record. The undertakings in the Affidavit are accepted as undertakings to the Court subject to certain modifications, terms and conditions that are set out in the following order.

2. In paragraph 1 of this Affidavit, the developer, Shree Umiya Builders and Developers (“**Umiya**”) says that it has paid an amount of Rs. 27.90 lakhs on 1st December 2021 in part payment of the total transit rent arrears claim of Rs. 1,23,60,000/-. The earlier order said Rs. 1,24,00,000/- but we will accept this figure of Rs. 1,23,60,000/- as the final figure on a proper computation. The balance towards pending transit rent is Rs. 95.70 lakhs. The developer proposes to pay this in four installments: (i) Rs. 27.90 lakhs on or before 15th January 2022, (ii) Rs. 27.90 lakhs on or before 20th February 2022, (iii) Rs. 27.90 lakhs on or before 20th March 2022 and (iv) Rs. 12 lakhs on or before 20th April 2022.

3. Items (iii) and (iv) require modification and we extend the date for both of these to 31st March 2022 and 28th April 2022 respectively because it is proposed that by 31st March 2022 the permanent rehab building construction will be complete. This means that it will have all the necessary facilities and amenities and an occupation certificate. It will also be completed in all respects. The society will be given notice of the readiness of the permanent rehab building. Within seven days of receipt/ service of that notice, the society members will vacate the transit accommodation building and shift to the permanent rehab building. The amounts in clauses (iii) and (iv) will be due and payable against the society vacating the transit building. Hence this alteration in the schedule.

4. This is also necessary because the transit building is to be demolished to make way for an electric substation.

5. In addition, we clarify that the amounts are to be deposited by the developer in this Court. The society will then withdraw these amounts in the name of the society itself, and the society will then distribute the amount/s withdrawn in accordance with the entitlement of the various society members who are in transit accommodation.

6. As regards the last clause (iv), the amount will not be Rs. 12 lakhs since this is computed only until August 2021. The amount will be computed up to 31st December 2021. From January 2022 onwards, the developer will make monthly payment over and above

these installments of arrears on or before 5th of each month commencing from 5th January 2022.

7. As and by way of an added precaution, we give the developer an extra grace period of four bank working days should any one of these deadlines be inadvertently missed.

8. Umiya through Mr Sawant agrees that in the event that the developer commits a default of anyone of these installments or of any one of the monthly payments after January 2022, the SRA will immediately proceed to terminate the LOI of the developer including all the rights to the free sale component. The developer also agrees further that, on such default, the balance amounts due from the developer will be recoverable by the society and this order will be executable in that regard.

9. There is a question of two Mandirs said to be on CTS No. 46 (part) and CTS No. 45 and 43. These are admittedly not part of the LOI, the DA or any other documents such as the sanctioned plan. We do not direct the developer to provide alternative locations for either of these Mandirs. Both will be removed and the SRA will ensure that there is adequate security for this purpose and sufficient advance notice of at least seven days. The society agrees and undertakes not to obstruct the removal of either of these Mandirs. If there is any obstruction from the society or any of its members, the society's entitlement to any arrears of transit rent or ongoing transit rent will be forfeited. Ms Rolland has instructions to agree to this.

10. As regards the power of attorney contemplated in Clause 9, we grant leave it to the Advocates for the builder and for the society to work out the exact terms of that power of attorney. Neither side will be unreasonable in that process.

11. Paragraph 4 requires that the society shall on or before 2nd January 2022 provide all necessary documents such as Aadhar Card, Ration Card, Voter Id as per SRA norms and regulations to meet pending compliance to update the Annexure II. The society agrees and undertakes to do so and confirms that all its members will comply.

12. The remaining statements and undertakings in the Affidavit are all accepted as undertaking to the Court.

13. A soft copy of the present Affidavit is to be uploaded as the second order in the matter.

14. The Deponent of the Affidavit is personally present in Court as this order is passed.

15. The four Petitions are disposed of in these terms.

16. The Court Receiver had made a site visit pursuant to our directions dated 3rd December 2021. We quantify the costs payable by the builder Umiya to the Court Receiver at Rs. 30,000/-. The amount is to be paid to the representatives of the Court Receiver who attended on site.

17. All IAs stand disposed of accordingly.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)