

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1008 OF 2016

Mamtora Builders ...Appellant
Versus
Kandivli Samir Co-op.Hsg. Soc.
Ltd. and Ors. ...Respondents

FIRST APPEAL NO.735 OF 2016

Kandivli Samir Co-op.Hsg. Soc.
Ltd. ...Appellant
Versus
Dhirendra Monji Tanna (Since
deceased)⁷
1(a) Smt. Shobaben Dhirendra
Tanna and Ors. ...Respondents

...

Mr. Surel Shah with Ms Riddhi Shah and Ms Ruchi Jhawar for the Applicants in IA/2551/ 2022 and FA/704/2016, for Respondent Nos.2, 3 and 6 in FA/1008/2016 and for Respondent Nos.1a, 1b and 1c in FA/735/2016.

Mr. Rajiv Narula i/b. M/s. Jhangiani Narula and Associate for the Appellant in FA/1008/2016.

Mr. Shreepad Murthy with Ms Clarissa Miranda i/b. Mr. Abhishek Patil for Respondent No.1 in FA/704/2016 and FA/1008/2016 and for the Appellant in FA/735/2016.

Mr. Santosh Parad for Respondent No.7-MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th AUGUST, 2022.

P.C.:-

1. The Respondent Nos.2(a) to 2(e) are the owners of the land

wherein the building 'Samir Apartment' is situated. Respondent No.1 is the registered co-operative Housing society formed by the flat purchasers of the building 'Samir Apartment'. By agreement dated 10/07/2003 the predecessors of the Respondent Nos.2(a) to 2(e) had assigned development rights in respect of the subject property in favour of the Appellant. Dispute between the owners, Developers and the Society led to filing of suit No.1099 of 2018 and 518 of 2010.

2. The owners and the Appellant-Developer filed consent terms in L.C. Suit No.1099 of 2018. Accordingly, the said suit was decreed as per the consent terms filed by the Appellant Developers and the owners. As per the said consent terms the Appellant was required to settle the dispute with the Society and entitled to develop the plot and every portion thereof by utilising the entire development potential thereon, including fungible FSI and TDR/FSI by way of road width TDR, subject to the understanding separately arrived at and recorded between the parties in respect of the plot of land occupied by Samir CHS. Under the said terms Respondent Nos.2(a) to 2(e) were entitled for area of 1600 sq. ft. carpet area towards permanent alternate accommodation. Pursuant to the said settlement, the Appellant-Developer and the Respondent -owners except Respondent No.2 (c),

entered into a Memorandum of Understanding whereunder the Appellant interalia agreed to pay to the Respondent -owners a sum of Rs.53,00,000/-.

3. By judgment dated 23/09/2015 learned Judge, City Civil Court, Borivali Division, Dindoshi partly decreed L.C. Suit No.518 of 2010 filed by Respondent No.1 Society and directed Respondent Nos.2(a) to 2(e) to convey the title and interest over the land beneath the building Samir Apartment and building in favour of Respondent No.1-Society as per the law and MOFA agreement. The Appellant herein was restrained from disturbing area admeasuring 628.28 sq.meters to which Respondent No.1 society is entitled by way of TDR. This judgment is challenged by the Appellant-Developer in First Appeal No. 1008 of 2016, by Respondent No.1-Society in First Appeal No.735 of 2016 and by Respondent -owners in First Appeal No.704 of 2016.

4. During the pendency of these appeals, the Appellant-Developer and Respondent No.1-Society have resolved the dispute amicably. They have filed the consent terms, which read thus:-

“4. Agreed, declared and confirmed by the Respondent No.

1 that:-

a. Respondents No.2 (a) to 2(e) are the Owners of all

*that piece and parcel of land bearing C. T. S. Nos. 12A, 12A/1 to 14 and 12B of the Village Malad, admeasuring 1750.10 sq. mtrs. situate, lying and being at Mathuradas Road, Kandivali West, Mumbai-400067 (“the Property”). The Property is more particularly described in the Schedule annexed hereto as **Annexure “A”**.*

b. Appellants have constructed a building known as “Vallabh Kunj”, comprising of ground + part stilt + 7 upper floors on a portion of the Property by demolishing structures then standing thereon in accordance with the building regulations, sanctioned Plans and approvals.

*c. The Flat Purchasers and tenants/occupants rehabilitated in Vallabh Kunj Building have come together and formed and registered a cooperative Housing Society under the provisions of Maharashtra Co-operative Societies Act, 1960 under the name “Vallabh Kunj Co-operative Housing Society Limited” (hereinafter referred to as “**Vallabh Kunj Society**”)*

d. There is another building known as “Samir

Apartment” comprising of ground plus 6 floors standing on another portion of the Property having a plinth area of 86.94 sq. mtrs. (“the building”).

e. The building was constructed in the year 1973-1974. The Flat Purchasers of the building formed and registered a Society under the Maharashtra Co-operative Societies Act, 1960 being the Respondent No.1 herein. The Respondent No. 1 comprises of 14 Members.

f. The building has become old and dilapidated. MCGM has issued Notice dated 11th July 2019 bearing No. RS/BF-30/354/591 under Section 354 of Mumbai Municipal Corporation Act. The building requires extensive repairs involving substantial expenditure. The Respondent No. 1 desires to demolish the building and construct a New Building through Appellants, by utilizing the consumed FSI of the Building and the entitlement of the Respondent No. 1 to load and consume TDR of 628. 28 square metres, with a view to provide better amenities and larger areas to reside for the Members of the Respondent No.1.

5. During his lifetime, Mr. Dhirendra Tanna (since deceased)

alongwith his wife, Respondents No. 2(a) have from time to time by and under various Agreements granted rights in favour of the Appellants for developing the Property. Pursuant to the death of Mr. Dhirendra Tanna, Respondent No. 2(a) to 2(e) have confirmed the rights of the Appellants for developing the Property.

6. *Under the Order dated 20th December 2019 passed by the Hon'ble Court in terms of the Consent Terms dated 15th July 2019 executed by Respondent No. 2(a) to 2(e) and the Appellants in L.C. Suit No. 1099 of 2018 filed in Bombay City Civil Court at Bombay, Dindoshi Division (**"Order passed in terms of Consent Terms"**), it is Ordered and Decreed and undertaken by Respondent No. 2(a) to 2(e) to the Hon'ble Court that the Appellants are fully entitled to develop the Property and every portion thereof by utilizing the entire development potential thereof, including fungible FSI and TDR/FSI by way of road width TDR and any other additional benefit that may become available in respect of the Property in future by way of FSI and/or TDR and/or in any manner.*

7. *Negotiations ensued between the Appellants, Respondent*

No. 1 and its Members and the terms and conditions on which the Appellants shall undertake the redevelopment of the Building was discussed and finalized.

8. *By and under a Redevelopment Agreement dated 30th June, 2021 executed between Respondent No.1, its Members and the Appellants (“Redevelopment Agreement”), Respondent No.1 and its Members have, granted redevelopment rights in favour of the Appellants authorizing the Appellants to demolish the building and construct New Building by utilizing the consumed FSI of the Building, loading and consuming TDR of 628.28 square meters (including 156.30 sq. mtrs. Set back area), along with loading and consuming of TDR FSI of 471.98 square meters on the Property that the Respondent No. 1 is entitled to and any other FSI in any form that would be available to Appellants for construction of the New building on the Property including Fungible FSI, additional incentive benefit of 10 sq. mtrs of per existing Member or 15% of total built up area which is higher, FSI, available on payment of premium or otherwise for*

*construction and / or area available for construction free of FSI and the FSI available under Regulation 33 (7b), Road Width TDR/ FSI, TDR in accordance with the Building Regulations and Development Control and Promotion Regulations 2034. The Redevelopment Agreement is registered with the Sub-Registrar of Assurances under Serial No.BRL-4 – 7994-2021. Copy of the Redevelopment Agreement (without Annexures) is annexed hereto and marked as **Annexure “B”**. However Clause 33 of the said agreement dated 30th June 2021, stands modified by Resolution dated 1/8/2022 of Managing Committee of Respondent No.1, a copy whereof is annexed hereto and marked Ex. **“B1”** which will be ratified by the General Body within 90 days from date hereof.*

- 9 The Respondent No. 1 has also executed a Power of Attorney dated 30.06.2021 in favour of the Partners of the Appellants authorizing them to all the acts, deeds, matters and things for undertaking the redevelopment of the Building in the manner set out in the Re-Development Agreement executed with the Respondent No. 1 and its*

Members (“Power of Attorney”). The Power of Attorney is registered with the Sub-Registrar of Assurances under Serial No. BRL-4-7998-2021.

- 10. Agreed, Ordered and Decreed that the Appellants are entitled to redevelop the building and have agreed to construct one composite New Building on the Property, comprising of Rehab component and the sale component, by utilising the entire balance development potential of the entire Property.*
- 11. Respondent No.1 through its Members have agreed and undertake to this Hon’ble Court to co-operate with the Appellants for undertaking the redevelopment of the Building in accordance with the Redevelopment Agreement and further agree and undertake to this Hon’ble Court to not to create any kind of hindrance/objections in the way of the redevelopment and to vacate their respective premises and hand over possession of the respective Premises and the building to the Appellants on issuance of the IOD and in the manner set out in the Redevelopment Agreement for the purpose of redevelopment.*

12. *On being called upon by the Appellants, the Respondent No. 1 through its Members undertake to this Hon'ble Court to admit the Flat/Unit Purchasers/of the Appellants and the tenants and Respondents No. 2(a) to 2(e) as Members of the Respondent No. 1,*
13. *The draft copy of these Consent Terms is circulated to each Member of the Respondent No.1. The Respondent No.1 in its Special General Body Meeting held on 4.4.2021 by a majority of the Members present therein have approved the draft of these Consent Terms and have authorized Mr. Amratlal G. Dhakan, Chairman, Mr. Sudhir J. Modi, Secretary and Mr. Ketan A. Dalal, Treasurer and to execute these Consent Terms and to remain present in the Hon'ble Court for filing of these Consent Terms. Copy of the Resolution passed in the Special General Body Meeting is annexed hereto as **Annexure "C"**.*
14. *The Parties hereto withdraw all the allegations and contentions made against each other.*
15. *The Respondent No. 1 agrees and undertakes to withdraw Appeal No. 735 of 2016 filed in this Hon'ble Court against the Appellants and others within a period*

of 15 days from the date of Order passed by the Hon'ble Court in terms of these Consent Terms."

5. The consent terms are signed by one of the partners of the Appellant and by the President, Secretary and Treasurer of the Respondent No.1-Society and by their respective counsel. The parties-Secretary and Treasurer as well as the partner of the Appellant are present before the Court. They have confirmed the contents of the consent terms. The terms are agreeable to the parties and hence are taken on record and marked 'X' for identification.

6. Mr. Surel Shah, learned counsel for Respondent -owners submits that the Developer has not paid Rs.53,00,000/- as per the MoU. Mr. Rajiv Narula, learned counsel for the Appellant, under instructions makes a statement that Rs.53,00,000/- as per the undated MoU between the Appellant and the Respondent Nos.2(a) to 2(e)/ original owners will be deposited before this Court within a period of four weeks. The statement is accepted as an undertaking to the Court. Learned counsel for the Appellant -Developer and learned counsel for the Respondent -owners state that the said amount be invested in any Nationalised bank and that the owners may be permitted to withdraw the said amount subject to compliance of the terms recorded in MoU

and on obtaining signature of Vilesh Dhirendra Tanna.

7. Under the circumstances, First Appeal Nos.1008 of 2016 and 735 of 2016 stand disposed of in view of the consent terms filed by the Appellant-Developer and Respondent No.1-Society.

8. The Appellant-Developer shall deposit an amount of Rs.53,00,000/- before this Court within a period of four weeks. The said amount shall be invested in any nationalised bank until further orders.

9. The Respondent-owners shall be entitled to withdraw the said amount subject to compliance of the terms recorded in the MoU and on obtaining signature of Vilesh Dhirendra Tanna-Respondent No.2(e) on the said MoU.

10. The consent terms between the Appellant-Developer and Respondent No.1 society shall not affect right of Respondent - Owners to proceed with First Appeal No.704 of 2016 in accordance with law.

(SMT. ANUJA PRABHUDESSAI, J.)