

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

WRIT PETITION NO. 6615 OF 2022

M/s. Gulmohar Co-operative Housing
Society Limited

.. Petitioner

V/s

Navi Mumbai Municipal Corporation
& Ors.

.. Respondents

Mr.Ramesh D. Soni a/w Adv. V.R. Kalsse and Adv. M. A. Saiyed
for Petitioner.

Mr.Sandeep Marne for Respondent.

Mr.Nitin V. Gangal a/w Prerna Shukla for Respondent No.60 -
CIDCO.

Dr.Birendra Saraf a/w Yash Momaya, Samit Shukla Saloni Shah
i/b. DSK Legal - for Respondent No. 70, Sun City Infrastructure
(Mumbai) LLP.

**CORAM: A. A. SAYED &
ABHAY AHUJA, JJ.**

DATE : 13th JUNE 2022

P.C. :-

1. The Petition is filed by the Petitioner-Society seeking the
following reliefs :

*a) That this Honourable Court be pleased to issue
a writ mandamus or writ in nature of mandamus
or any other appropriate writ direction and order*

under Article 226 of the Constitution of India, 1950, thereby be pleased to direct the Respondent Nos. 1 to 5 forthwith to take actions to vacate the persons/members who are staying in the building of the Petitioner's society which are declared as C-1 Category buildings situated at Plot No.18, Building Nos.64 to 81, Sector-9, Vashi, Navi-Mumbai, and to take action under Section 264 and 268 of the Maharashtra Municipal Corporation Act, 1949.

b) That this Hon'ble Court be direct the Respondent Nos.6 to 59 to pay sum of Rs.5 lakhs each to the Petitioner by way of penalty for stalling redevelopment and not vacating the tenements for redevelopment of the Society's buildings.

c) That this Hon'ble Court be pleased to direct the Respondent No.5 to register a criminal case against the Respondent No.6 to 59 for illegally reconnecting the water connection without permission from the Respondent No.1."

2. Learned Counsel for the Petitioner-Society has pointed out the order dated 26th August, 2021 passed in Writ Petition No. 2138 of 2021 filed by some of the tenants/occupants of the buildings belonging to the Petitioner-Society wherein the Division Bench of this Court disposed of the said Writ Petition interalia noting that the buildings are categorized as C-1 and out of 288 occupants, 177 occupants have already given their consent for redevelopment and 100 occupants have already

vacated their premises since the last two years and the Developer is incurring the burden of paying compensation in lieu of temporary alternate accommodation to the said 100 occupants since the last two years.

3. Learned Counsel for the Petitioner-Society has pointed out the Chart (Exh.F at Page 69 of the Petition) which shows that out of 288 occupants, now 222 occupants have already vacated the subject building. We are told that the electricity and water supply have already been disconnected, however, electricity and water supply are being taken illegally by some of the tenants / occupants who are still occupying their premises in the buildings. Learned Counsel for the Respondent-Developer has pointed out that the entire redevelopment is of three Societies including the Petitioner-Society, consisting of 592 tenants/occupants and 510 occupants/tenants have already vacated their respective premises.

4. It is not in dispute that the buildings in question have been categorized as C-1 and are in a dilapidated state. The other tenants/occupants who have vacated their premises are

awaiting redevelopment and construction of new buildings after demolishing the old buildings, so that they can be put back in possession their permanent alternate accommodation.

5. In the facts and circumstances of the case, we are of the view that the demolition of the buildings and construction of new buildings cannot be stalled by a handful of tenants/occupants, particularly when the buildings have been categorized as C-1 and are required to be demolished and reconstructed. An overwhelming majority of the tenants/occupants have already vacated their premises as stated above. The Respondent-Developer is incurring huge expenses towards transit accommodation for the tenants/occupants who have already vacated their premises for the last about 3 years.

6. In the circumstances, we allow the Petition in terms of Prayer Clause (a).

7. Respondent No.5 - Senior Inspector of Vashi Police Station shall render necessary police protection to the Respondent-Corporation to ensure compliance of this order.

8. We record the statement of the learned Senior Counsel Dr.Saraf for the Respondent- Developer that all the eligible tenants/ occupants of the buildings including eligible Petitioners in Writ Petition No. 440 of 2022 and Writ Petition (St) No. 25914 of 2021 shall be treated at par with the other tenants/occupants in so far the transit rent and other payments are concerned and their interest would be protected and they would be given permanent alternate accommodation.

9. The Writ Petition is disposed of in the aforesaid terms.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)

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signed by
YUGANDHARA
SHARAD
PATIL
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