

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 8541 OF 2021

Mrs. Sheetal Vikas Jadhav and anr. ... Petitioners

V/s.

Ketan Heights Co-operative
Housing Society Ltd. ... Respondent

Mr.S. S. Kanetkar a/w Nikhil Dongre for the Petitioners.

Mr. Pralhad Paranjape i/b. Ms. Druti Dadar, for the Respondent.

CORAM : A.S. GADKARI, J.

DATE : 1st March, 2022.

PC. :

1. By the present Petition filed under Article 226 of the Constitution of India, the Petitioners having singular membership in the Respondent's Society, challenged the Order dated 24th November, 2020 passed below Exh.5 in Dispute No.4 of 2020 by which the learned Judge, Co-operative Court No.2, Pune, allowed the Application preferred by the Respondent.

2. Heard Mr.S. S. Kanetkar for the Petitioners and Mr. Pralhad Paranjape for the Respondent. Perused Record.

3. It is an admitted fact on record that, the Respondent-Society decided to re-develop its property which is a Tenant-Co-Partnership Housing Society. Out of total 48 members of it, 47 members have opted for re-development and the Petitioners who jointly share one membership are the only persons opposing the same. It is by now well settled position of law that, the minority descending member of the Society cannot oppose re-development, once the Society by majority having not less than 70% of its members and decides to opt the course of action for re-development. The

learned single Judge of this Court in its Judgment dated 19th March, 2021 in the case of ***Western Sankalp Developers in Comm. Arbitration Petition (L) No.221 of 2020*** in paragraph 4 has observed as under;

4. *This tells us that the very arguments that Mr. Pachundkar tries to raise today are no longer available to him. These two dissenting members have, as the Hon'ble Mr Justice K K Tated put it, and as the Division Bench also said, no separate identity from that of the society. Their identity is subsumed and merged into that of the society. They do not have the right to oppose the decision of the society taken in a properly convened meeting. They cannot hold the society to ransom. They cannot prejudice the rights of their fellow members and neighbours in the society. They cannot insist on getting their own way. They cannot be heard to say that they and they alone will determine the future of the society, its property and its redevelopment project. As I said in Chirag Infra Projects, these dissenting members will bend their knee to the law and to the decision of the general body. However unpalatable it may be for them, this is the only method the law recognizes of safeguarding the rights of the society as a legal entity recognized by the Cooperative Societies Act 1960.*

The said view is further reiterated by the division bench of this Court in ***Writ Petition (L) No.10676 of 2021 in Pannalal Nagar Tenant Welfare Association vs. MCGM and ors*** in its order dated 19th January, 2022.

4. The observations made by the learned Single Judge in the aforesaid Judgment dated 19th March, 2021 are squarely applicable to the case in hand. It appears from the record that the Petitioners for the reasons best known to them and according to me for the reasons other than legal, are opposing the redevelopment of the Respondent No.1– Society. The Petitioners

alone cannot determine the future of the Society, its property and its re-development project.

5. According to the learned counsel for the Petitioner, the dispute is not maintainable before the Co-operative Court under Section 91 of the Act. Perusal of the dispute filed by the Petitioner, clearly indicates that, it is a dispute between the Society and its members and therefore, the dispute as filed under Section 91 of the Maharashtra Co-operative Societies Act, is maintainable before the Co-operative Court at Pune. The contention of the Petitioner to that extent, therefore, cannot be accepted.

6. After perusing the entire record, this Court is of the view that the trial Court has not committed any error either on facts or in law while passing the impugned Order dated 24th November, 2020.

7. Petition is accordingly dismissed.

[A.S. GADKARI, J.]