

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 169 OF 2022

Hirani Realtors LLP (formerly known as
Hirani Realtors Pvt. Ltd.) .. Petitioner

Vs.

Jeevan Shobha CHSL & Ors. .. Respondents

Mr. Harinder Toor a/w. Mr. Yuvraj Singh, Mr. Sameer J. Chitnis, Mrs. Manjiri S. Chitnis and Ms. Madhura Kulkarni i/b. M/s. Chitnis & Co. for the petitioner.

Mr. Mayur Khandeparkar, Mr. Rajiv Singh, Ms. Astha Tahmankar i/b. Mr. Dilip Kulkarni for respondent no. 1.

Mr. Shanay Shah with Ms. Akanksha Mishra i/b. Rahul Tiwari for respondent nos. 2 to 4.

Mr. Harsh Nishar for respondent no. 5.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 22, 2022.

P.C.:

1. This is a petition filed under section 9 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the petitioner, who has been appointed as a developer by respondent no. 1-Jeevan Shobha Cooperative Housing Society Ltd. (for short “the Society”), is before the Court praying for interim reliefs pending the arbitral proceedings.

2. The Development Agreement between the petitioner and respondent no. 1 was entered on 7 June, 2012, as also there were subsequent agreements, namely, the First Supplementary Development Agreement dated 2 February, 2021 and the Second Supplementary

Development Agreement dated 19 July, 2021. All these Agreements are registered with the Registrar of Assurances as stated in the petition. A peculiar feature of the present case is to the effect that the petitioner has also acquired rights in respect of the land on which the premises of the Society are situated, from the original owners of the land and which is by way of a Deed of Conveyance dated 3 June, 2010. The Society indisputably enjoys the lease of the land for a period of 999 years from the original owners and which according to the petitioner also stands unaffected despite the conveyance as entered by the original owners and the petitioner. Be that as it may, as far as the present proceedings are concerned, conveyance is not an immediate issue.

3. The grievance of the petitioner is in regard to respondent nos. 2 to 5, who are members of the Society who are occupying their respective tenements. The petitioner has contended that there are 48 members of the Society. All these members including respondent nos. 2 to 5, at all material times (since the year 2011) have agreed for redevelopment of the society's premises/building, which was constructed in the year 1969. The petitioner has contended that out of 48 members, 43 members have already vacated their respective tenements so as to enable the petitioner to undertake the redevelopment work. Respondent nos. 2 and 5 are also not residing in their respective tenements and only

respondent nos. 3 and 4 are presently occupying their tenements. Respondent no. 2 and 5 have also not handed over vacant possession of the tenements to the Society or the petitioner, although they are not occupying their tenements. It is in these circumstances, the petitioner contends that the redevelopment process ought to have commenced long back. The petitioner contends that it has already spent an amount of almost 17 crores which includes payments by the Society to its members who have already vacated their tenements. The details of which are set out in a statement which is annexed at page nos. 359 to 361.

4. The petitioner has also contended that the delay being caused by the conduct in respondent nos. 2 to 5 not handing over their tenements to the petitioner or the society is causing serious prejudice not only to the petitioner but also to other members of the Society, who are majority members and who have already vacated their tenements. According to the petitioner, this is also adding to the overall cost of the project, as the redevelopment itself is being delayed for no reason whatsoever. It is in these circumstances, the petitioner has prayed that respondent nos. 2 to 5 be directed to vacate their premises and handover the possession to the petitioner/Society and be restrained from causing any obstruction/non-cooperation to the redevelopment. Petitioner's

alternative prayer is that the Court Receiver, High Court, be appointed as Receiver so that the possession of the premises from respondent nos. 2 to 5 can be taken over in the event these respondents refuse to vacate.

5. I have heard Mr. Toor, learned counsel for the petitioner, Mr. Khandeparkar, learned counsel for the Society, Mr. Sanay Shah, learned counsel for respondent nos. 2 to 4 and Mr. Nishar, learned counsel for respondent no. 5. After the proceedings were heard for sometime, Mr. Shah, learned counsel for respondent nos. 2 to 4, on instructions from his clients who are present in the Court, states that his clients would take a reasonable approach. He however states that the primary concern of his clients is in regard to the financial capacity of the petitioner to undertake and complete the project. The second concern of his clients is in regard to the conveyance to be made of the land in favour of the Society after the redevelopment work is completed. The third concern is to the effect that respondent nos. 2 to 4 should to be treated at par with the other members, and ought not to be in any manner treated differently on any aspect merely because they have asserted such issues.

6. Mr. Toor in responding to Mr. Shah's contention would state that the petitioner has all the financial wherewithal/ability to undertake and complete the project. On instructions, he also makes a statement that

the project in no manner whatsoever shall be delayed on account of any financial constraints or inability of the petitioner on any such count whatsoever.. He also makes a statement that there shall be no default by the petitioner, in payment of rent for temporary alternate accommodation to any members of the Society. Insofar as the grievance of respondent no. 2 to 4 in regard to the equal treatment / parity is concerned, he also makes a statement that respondent nos. 2 to 4 shall be treated at par with other members of the Society and they shall be entitled to all the benefits which are being made available to other members of the Society under the Development Agreement read with Supplementary Agreement. Insofar as the grievance of respondent no. 2 to 4, in regard to the conveyance of the land in favour of the Society is concerned, he makes a statement that the conveyance in favour of the Society shall be executed after the redevelopment work is completed. In my opinion, the statement as made by Mr. Toor would take care of the concerns and anxiety of respondent nos. 2 to 4 on the three issues as noted above. Hence, respondent nos. 2 to 4, now ought to vacate their tenements.

7. Mr. Shah, learned counsel for respondent nos. 2 to 4 would submit on such assurances being made by the petitioner his clients would vacate the premises within a period of four weeks from today. In

view of the fair stand taken by the parties, nothing further would remain for adjudication insofar the grievance of respondent nos. 2 to 4 are concerned.

8. Insofar as respondent no. 5 is concerned, Mr. Nishar, learned counsel for respondent no. 5 has made a statement that his client was always willing to cooperate in the redevelopment work. He also states that his client is also ready and willing to handover the tenements to the petitioner/society and what is awaited is only the execution of a Permanent Alternate Accommodation Agreement (PAAA) by the petitioner and the society with the respondent no.5 and the balance amounts which are to be paid on respondent no.5 vacating the tenement. Respondent no. 5 has accepted the corpus amounts under the Development Agreement. Thus, the case of respondent no. 5 is not different from that of respondent nos. 2 to 4.

9. Mr. Sanay Shah, learned counsel for respondent nos. 2 to 4 has also made a statement that in view of the disputes being resolved in the above terms, his clients would also not prosecute the Writ Petition filed by his clients in this Court as also any other complaints which are made against the Society and/or the petitioner.

10. The petition accordingly needs to be disposed of by the following order:

- (i) The petitioner and the Society shall enter into PAAA with respondent nos. 2 to 5 within a period of two weeks from today. This is agreed between the petitioner, Society as also respondent nos. 2 to 5.
- (ii) Respondent nos. 2 to 5 shall handover the possession of their respective premises to the petitioner/Society within a period of four weeks from today. This shall be subject to the PAAA being entered by the petitioner and Society with respondent nos. 2 to 5.
- (iii) Respondent nos. 2 to 5 shall be entitled to the amount of advance transit rent as payable to the other members of the Society, which shall be paid to respondent nos. 2 to 5 on the day their respective premises are being handed over by respondent nos. 2 to 5 to the petitioner/Society.
- (iv) As some amounts are already paid to respondent no. 5, balance amount be paid to respondent no.5, on the day respondent no. 5 hands over the premises to the petitioner/Society.
- (v) The statement as made by Mr. Toor on behalf of the petitioner and as recorded in paragraph no. 6 stands

accepted as in undertaking to the Court.

11. In view of the above orders, further adjudication of this petition is not called for.

12. At this stage, Mr. Toor has also made a statement that the petitioner would not foist any penalty, litigation cost on respondent nos. 2 to 5 for the delay of these respondents in vacating their respective premises. Also in regard to any deficit in the stamp duty, the petitioner and Society shall assist respondent nos. 2 to 5 to avail credit of the stamp duty.

13. The above order is passed on the assurances of respondent nos. 2 to 5 that they will vacate the premises within four weeks from today. However, at this stage, Mr. Toor has expressed his anxiety that in the event respondent nos. 2 to 5 does not vacate the premises within the period as directed, this Court needs to pass an order appointing the Court Receiver to take possession of the tenements of these respondents so that the premises of respondent no. 2 to 5 can be handed over to the petitioner/society. Mr. Toor would be justified in making such prayer. However, Mr. Shah and Mr.Nishar, on instructions assure that there would not be any necessity for such orders to be passed as the respondent nos. 2 to 5 shall vacate their respective tenements within the stipulated time. If the respondent nos. 2 to 5 do not vacate their

respective tenements, on a formal application of the petitioner such orders can be instantly passed alongwith other consequential orders.

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14. Disposed of in the above terms. No Cost.

[G.S. KULKARNI, J.]

corrected as per speaking to minutes order dated 28 June, 2022.