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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1368 OF 2023**

Vasant Villa Co-op Hsg. Soc. Ltd. Through its ... Petitioner
Secretary

vs.

Pen Nagar Parishad Pen and Ors. ... Respondents

Mr. S.B.Deshmukh a/w. Mr. Joshua Abhay Patnigere, Advocate for
the Petitioner.

Ms. Priyanka Bhadrashete, Advocate for Respondent Nos. 1 and 2.

Mr. Darshit K. Jain i/b. Ms. Divya Jain, Advocate for Respondent
Nos. 3 and 4.

**CORAM : R. D. DHANUKA &
GAURI GODSE, JJ.**

DATED : 12 APRIL, 2023

PC. :-

1. Rule. Ms. Bhadrashete learned counsel for Respondent Nos.1
and 2 and Mr. Jain for Respondent Nos. 3 and 4 waives service.
Rule is made returnable forthwith.

2. This Petition is file under Article 226 of the Constitution of
India. The Petitioner has prayed for Writ of Mandamus against
Respondent Nos. 1 and 2 to forthwith take action under Section 195
of the Maharashtra Municipal Councils, Nagar Panchayats and

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Industrial Townships Act, 1965 and seeks an order and direction to disconnect the electricity and water connection of the Petitioner society. The Petitioner also seeks Writ of Mandamus against Respondent Nos. 1 and 2 to vacate any of occupants in the building of the Petitioner society and if necessary to take assistance of the police.

3. We have perused the Structural Audit Report prepared by Mr. Ulhaskumar V. Patil (Structural Engineer) of the Petitioner society and also the photographs annexed there to which indicate that the structure is old and in dilapidated condition and beyond repairs. The structure should be dismantled with strict supervision of Civil Engineer so that no damage is caused to the adjoining structures. We have also perused the notice issued by the Respondent Nos. 1 and 2 accepting the said report submitted by the Structural Auditor Mr Ulhaskumar V. Patil and calling upon occupants to vacate the tenement on or within the time prescribed in the said notice.

4. We are informed by the learned counsel for the Petitioner Society that out of 22 occupants 20 occupants have vacated. Flat No. 202 has agreed to vacate on or before 15th April 2023. Except Respondent Nos. 3 and 4 all other members have already vacated.

5. Mr. Jain learned counsel for Respondent Nos. 3 and 4 vehemently submits that the condition of the building is not such which requires demolition. He submits that the report filed by the Petitioner Society before the Respondent Nos. 1 and 2 does not indicate that the building falls under C-I category.

6. Learned Counsel for Respondent Nos. 3 and 4 invited our attention to the resolution passed by the Petitioner Society annexed at Exhibit J1 to the Affidavit in rejoinder and submitted that the Society has not entered into any development agreement with the developer. The terms and conditions of redevelopment are not yet completed. He submitted that Respondent Nos. 3 and 4 are asked to vacate.

7. It is not in dispute that the Respondent Nos. 3 and 4 have not challenged the notice issued by Respondent Nos. 1 and 2. We cannot go into the validity of the resolution passed by the Petitioner Society whether redevelopment shall be carried out or not. The remedy of the Respondent Nos. 3 and 4 would be some where else. Respondent Nos. 3 and 4 have also not challenged the Structural Audit Report submitted by Ulhaskumar V. Patil. The two minority members cannot refuse to vacate the building when the other 20 occupants have

already vacated, except one Flat no. 202 which would be vacated on or before 15th April, 2023

8. This matter was on board before this Court on 10th April 2023 when this Court made it clear that Respondent Nos. 3 and 4 did not agree to vacate the flat within one week the Court will pass appropriate order for eviction. Respondent Nos. 3 and 4 are not agreeable to vacate the flat. The building is in dilapidated condition and is required to be pulled down by Respondent No. 1 Municipal Council. We accordingly pass the following order :

(i) Writ Petition is made absolute in terms of prayer clause (a) and (b).

(ii) Respondent Nos. 3 and 4 are directed to vacate and hand over possession of the tenement in their possession to the Petitioner Society on or before 11.00 am of 20th April 2023.

(iii) If the Respondent Nos. 3 and 4 do not hand over vacant possession to the Petitioner within the time prescribed the Respondent No. 1 would be at liberty to take forcible possession from Respondent Nos. 3 and 4, and if necessary, with the assistance of police authorities.

(iv) After the tenements are vacated the property shall be demolished by Respondent no. 1 within four weeks without fail.

(v) Writ Petition is allowed in the aforesaid terms. Rule is made absolute. No orders as to costs.

(vi) It is made clear that during this period Respondent Nos. 3 and 4 who have not vacated the society building as on date, shall not hold the society as well as the Authority responsible, in case of any untoward incident occurs. It is made clear that Respondent Nos. 3 and 4 who have not vacated the flats continue to stay in the building, it will be at their own risk.

(vi) Parties to act on an authenticated copy of this order.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)