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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9065 OF 2021

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Gokuldaswadi Co-Operative Housing Society Ltd
& Anr ...Petitioners
Versus
Thane Municipal Corporation & Ors ...Respondents

Ms Prachi K, i/b MP Vashi & Ass, for the Petitioners.
Mr Mandar Limaye, for Respondent No.1.
Mr Vijay D Patil, for Respondent No.2.
Mr Ankit Lohia, with Bharat Jain i/b Economic Law Practice, for
Respondent No.3 (a to e).

CORAM G.S. Patel &
Dr Neela Gokhale, JJ.
DATED: 13th February 2023

PC:-

1. We are not inclined to accept the request of Mr Lohia on behalf of Respondents Nos. 3(a) to 3(e) for an adjournment of the matter. The Writ Petition has been pending since 2021. It is filed by a slum co-operative society at Mauje Panchpakhadi, Thane and a developer firm. The 1st Respondent was the Thane Municipal Corporation. The 2nd Respondent is now the Slum Redevelopment Authority. The original 3rd Respondent died and her heirs are now on record as Respondents Nos.3(a) to 3(e). The 4th Respondent is

the Provident Investment India Limited or PIIL, an undertaking of government of Madhya Pradesh.

2. The dispute here relates to land at Survey No. 91 (Part), 92, 94 and 113 (Part) in Thane. There were 676 slum structures on this land, and it was declared as a slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. That notification is not challenged in these proceedings.

3. Between the owners of the land and PIIL, there is a title suit filed in 1969. Embarrassingly, that suit is still pending on the docket of this Court. The reason it is pending is that at some point there was a dispute between the plaintiffs and PIIL about reconstruction of the record in that suit. This was after the trial had begun. The suit itself is for redemption of a mortgage or a set of mortgages. The matter of record reconstruction took a strange turn when this attempted reconstruction was opposed by PIIL. That company also objected to the appearance, oddly enough, of a particular law firm on behalf of the plaintiffs. The ensuing discussion involved the then Advocate General, the then Additional Solicitor General, Senior Counsel from all sides and went on for some days before a learned Single Judge of this Court. After a lengthy discussion, the result was that the trial of the suit was stayed. This stay then continued in appeal and lasted for a good decade or more. Ultimately, by an order dated 11th August 2022 of a Division Bench of this Court of which one of us (G.S. Patel, J) was a member, that stay was vacated.

4. Now in that suit, the original plaintiffs filed Notice of Motion No.3905 of 2009 seeking a status quo order. A copy of the resultant order of 27th January 2010 is at Exhibit H from page 31. The operative portion requires the *defendants* to maintain status quo and says that if the *defendants* desire to change the status quo, they may do so after obtaining the permission of this Court.

5. Neither the Thane Municipal Corporation (or its successor in title) nor the Petitioners (i.e., the society and the developer) who were ever parties to the suit. The owners do not seem to have taken any steps whatsoever to ascertain what was happening on site, whether there were slums, whether there was a slum project, who the developer was or any other particulars at all.

6. Ms Khandge for the Petitioners and Mr Limaye for the Thane Municipal Corporation both say that this order in a private lis between mortgagor and mortgagee for redemption could not possibly affect their rights. Mr Lohia for the owners says that the mortgagee, PIIL, had no entitlement or right in law to grant any NOC to either the society or the developer. But that surely required the plaintiffs in the suit to ascertain the facts and join the society and the developer as defendants to the suit and get an order specifically against them. It cannot be assumed that a status quo order in a private lis is to be read expansively to include anybody and everybody unconnected with that suit. The status quo order does not order a status quo *in regard to the land*. It specifically requires the *defendants* to maintain the status quo. The Petitioners and the

Thane Municipal Corporation were not defendants. We fail to see how the status quo could have applied to them.

7. Perhaps more out of enthusiasm than any real legal sagacity, the Thane Municipal Corporation seems to have applied to the Court to speak to the minutes of that order. That application was rightly rejected on 25th October 2013, on the ground that it could not be done by an application for speaking to the minutes which is meant to correct typographical errors. Nothing seems to have happened thereafter.

8. The Thane Municipal Corporation was succeeded by the Slum Rehabilitation Authority. The project is under way. In the meantime, because of the status quo order, the Slum Rehabilitation Authority has refused to renew the Petitioners' Intimation of Disapproval or IOD which is required to progress with the project in question.

9. We are quite unable to see how the interest of 676 slums developers are to be subjected to this private commercial dispute between a mortgagor and a mortgagee, particularly when the mortgagor-owner has done nothing at all to protect the land from encroachment. That mortgagor has not even taken the minimal steps necessary to bring before this Court the persons directly interested in the land or affected by its condition. It simply opposes further development of the land as if this is now in the public interest. It clearly is not.

10. For these reasons, and since the pleadings are complete, we issue rule, make rule returnable forthwith and proceed to make it absolute in terms of prayer clauses (a), (b) and (c) at pages 12 and 13 which read thus:

“a. That a Writ of Certiorari or any other writ or direction be issued calling for the records and files of the case and after going into the legality and validity of the impugned order dated 28th January 2021 (Exhibit K) quash and set aside the same.

b. That a writ of mandamus or any other writ, order or direction be issued ordering and directing the Respondent No.2 to issue a fresh the IOD to the Petitioners in accordance with the proposal submitted by the Petitioner No. 2 vide letter dated 18th January 2021 under MRTP and TMC DCR regulation.

c. That it be declared that the order of status quo granted by this Court dated 27th January 2010 (Exhibit H) does not in any manner prevent the petitioners from implementing the sanctioned SRA scheme.”

11. Mr Lohia says that the IOD is after the status quo order. That is surely irrelevant because the slums existed prior to the status quo order and the entire process began earlier. It is not as if IODs are issued overnight.

12. Mr Lohia expresses the apprehension that this order will be cited as a precedent in regard to other properties. He says that the mortgagee or its officers have granted other NOCs and even conveyed title. We have made no general or broader observation or returned any larger finding in regard to any other property or any

other conduct of the mortgagee. This order is naturally confined to the facts of the present case.

13. We lastly direct the Slum Rehabilitation Authority to consider the application by the Petitioners on its own merits.

14. The Petition is disposed of with no order as to costs.

(Dr Neela Gokhale, J)

(G. S. Patel, J)