

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6762 OF 2017

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Smt. Nasima Manna Inamdar

.. Petitioner

Vs.

M/s. Khaibar Developers & Ors.

.. Respondents

- Mr. Uday B. Nighot for the Petitioner.
- Mr. Owais A. Pechkar for Respondent No.1.
- Mr. R.S. Khadapkar for Respondent Nos.3 & 4–Corporation.
- Mr. A.A. Alaspurkar, AGP for Respondent Nos.5 & 6–State.

**CORAM : SUNIL B. SHUKRE &
M.W. CHANDWANI, J.J.**

DATE : 25TH JANUARY, 2023.

P.C. :

1. Heard learned counsel for the petitioner, learned counsel for Respondent No.1, learned counsel for Respondent Nos.3 & 4–Corporation and learned AGP for Respondent Nos.5 & 6–State.

2. It is the contention of learned counsel for Respondent No.1 that this petition has been rendered infructuous due to subsequent developments, which have occurred during pendency of the petition. Learned counsel for the Corporation also submits that insofar as prayer clause (a) is

concerned, this petition has been rendered infructuous and in support, he invites our attention to the averments made on behalf of the Corporation in Paragraphs (v) and (vii) of its reply. He, however, submits that the notice has been subsequently issued to the developer to show-cause as to why permission granted earlier be not revoked.

3. Though learned counsel for the petitioner submits that this petition has not been rendered infructuous, we cannot find any reason to agree with the submission of learned counsel for the petitioner. The only prayer made in this petition is for implementation of the notice dated 15.01.2016, whereby the Corporation had directed the developer of the building to demolish 4th and 5th floor of the subject building, which were constructed unauthorizedly. Reply of the Corporation shows that the 5th floor construction was demolished and 4th floor construction at that point of time was occupied by residents, therefore, could not be demolished. Subsequently, as seen from the reply, the developer reconstructed 5th floor with the permission of Corporation and the construction made in respect of the 4th floor was regularized by the Corporation and even the occupancy certificate was issued by the Corporation. Therefore, agreeing with these submissions of the learned counsel for Respondent No.1 and also for the Corporation, we find that this petition has been rendered infructuous. As regards the contention that no permission should have

been granted by the Corporation as well as the contention of learned counsel for the petitioner is that no further permission ought to have been granted to the petitioner by the Corporation and so the petitioner would have to pursue a separate remedy, if any.

4. The petition, is therefore, dismissed as infructuous. No costs.

5. The Corporation is at liberty to pursue its notice issued to the developer under Section 258 of the MMC Act in accordance with law.

[M.W. CHANDWANI, J.]

[SUNIL B. SHUKRE, J.]