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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11542 OF 2023**

Shridhar Chandrakant Godse & Ors

...Petitioners

Versus

The State of Maharashtra & Ors

...Respondents

Mr Karl Tamboly, *with Mangesh Kusurkar, Ashwin Hirulkar,
Kaevaan Setalvad, i/b Suyash Khose, for the Petitioners.*

Mr YD Patil, *AGP, for the State-Respondents Nos. 1 & 7.*

Mr Sandeep D Shinde, *for Respondents Nos. 2 to 5.*

Mr Anil Sakhare, Senior Advocate, *i/b Vivek Salunkhe, for
Respondents Nos. 8 to 10.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 12th September 2023

PC:-

1. The Respondents are now represented having been served.

2. Having heard Mr Tamboly for the Petitioners and considered the submissions as well as the material before us, we are not inclined to interfere. Some of our reasons were set out in the order that we passed on mentioning yesterday, 11th September 2023. The impugned notice of 6th September 2023 is at Exhibit "L" at page 128. But the entire Petition proceeds on the footing that quite

abruptly the five Petitioners were given notice to vacate the tenements in the structure in question. The impugned notice itself makes references to notices of 2022 as we had previously noted. We had also remarked that it was odd that the Petitioners waited until 9th September 2023, just a few days ago, to suddenly appoint their own Structural Auditor so that they could now lay claim to a demand that the reports be referred to the Technical Advisory Committee (“TAC”).

3. That branch of the law is, regrettably, widely misunderstood. In particular, nobody seems to have paid any attention at all to the final order in the Writ Petition in which an interim order fashioned or made guidelines that led to the creation of this TAC. We will examine that aspect of the matter in an appropriate case but since there are no contesting reports, we do not take up that issue today. What is undeniable and is stated in the Petition is that the Petitioners have filed a Civil Suit No. 425 of 2022 before the 6th Joint Civil Judge Senior Division, Kalyan. Paragraphs 13 to 16 deal with this. Mr Sakhare for the landlord Respondents Nos. 5 to 8 has shown us the prayers in that Suit. They are almost identical to the prayers in the present Petition.

4. But what the Petition does not mention is that these same five Petitioners who are the Plaintiffs before the Kalyan Court made a signed statement on 3rd September 2022 that their application for interim relief numbered as Exhibit “5” was not pressed. On that signed purshis, the Kalyan Court disposed of the Application on the basis that it was not pressed. We do not see how it is possible for

those Plaintiffs to now come as Writ Petitioners and seek the very same reliefs that they did not press and why there is a complete omission of this material fact in the Writ Petition itself. It is hardly conceivable that this fact was unknown to the Petitioners.

5. There is, therefore, no question of granting the kind of reliefs that are sought in this Writ Petition or of re-examining the structural stability of the building. Prayers (b) and (c) of the Petition read as follows:

“(b) This Hon’ble Court be pleased to issue appropriate writ, order and/ or direction and thereby quash and set aside the impugned Order dated 06.09.2023 [which is at “Exhibit -L” of this Petition], passed by Respondent No.4 (Assistant Director of Town Planning);

(c) Pending the hearing and final disposal of this Writ Petition, this Hon’ble High Court be pleased to issue writ of mandamus or any other writ, order and/or direction in the nature of mandamus and thereby direct the Respondents to maintain status quo as it was prior to the passing of impugned orders dated 06.09.2023 and direct Respondents herein to not to pass any order or take any steps which are coercive in nature and/or capable of disturbing peaceful possession of Petitioners herein or causing hindrance in continuation of their possession;

6. Clearly, these cannot be granted.

7. The maximum that we are able to do, and this is really not based on any equities or law in favour of Petitioners but is simply a matter of indulgence, is to grant the Petitioners a little further time to vacate. We say this because Mr Tamboly has instructions from

the five Petitioners who are in Court that they will vacate and will not apply for any extension of time to do so. They are not opposed to redevelopment. Their concern is that they are not being informed of what that redevelopment is likely to be and when it is likely to be done.

8. As to the question of vacating, given that there is a festive season immediately next week, we direct the Municipal Corporation not to commence the evacuation till 25th September 2023 but also direct that it must be completed by 30th September 2023.

9. We accept the statement of the five Petitioners through Mr Tamboly that they will vacate by 30th September 2023 as an undertaking to the Court, and, as a further undertaking to the Court that they will not apply either to this Court or to any other Court for an extension of time under any circumstances. It is only on the basis of these undertakings that we proceed to the next step.

10. We were compelled to ask Mr Sakhare what plans, if any, Respondents Nos. 8 to 10 had for the development of the property. His instructions were to say that there were none at present since the proposal is for self-redevelopment and that this requires a considerable amount of planning and financial resources that have yet to be gathered. As a matter of law, it is settled that the five Petitioners like all other tenants would be entitled to the redeveloped premises either on a tenancy basis or, depending on the nature and form the development takes (with or without premium of fungible FSI) on an ownership basis. In this context, Mr Sakhare has

instructions to accept the areas on the occupancy of the five Petitioners as set out in paragraph 3 at pages 10 and 11 of the Petition. We reproduce paragraph 3 below:

“3. The Petitioners state and submit that, as stated above the petitioners are the tenants of Raghukul Building. Petitioner No. 1 is residing in the said building and is under the occupation of room Nos. 1 and 2 admeasuring about 900 Sq. Fts. Petitioner No. 2 is residing in room No. 5 admeasuring about 476 Sq. Fts. Similarly, Petitioner Nos. 3, 4 and 5 are residing in room Nos. 6, 7 and 8, which are admeasuring about 600sq. Fts., 500 Sq. Fts. and 500 Sq. Fts. respectively. The Petitioners were residing in the said room/flat premises since considerable time and they are paying rent/premium to the Respondent Nos. 8 to 10 from time to time. As such, there is no complaint of default in paying of premiums at the behest of Respondent Nos. 8 to 10 i.e. landlords. Moreover, it won't be out of place to mention that no suit of eviction is instituted by the Respondent Nos. 8 to 10 against the Petitioner Nos. 3, 4 and 5 in any Court of law of competent jurisdiction. Hereto annexed and marked as “Exhibit – A(Colly)” is a copy of agreement executed between one of the Petitioners and Predecessor-in-title of Respondent Nos. 8 to 10. Hereto annexed and marked as “Exhibit-B” is the copy of rent receipts of one of the Tenants/ Petitioners stating that the Petitioners were paying the due premiums/rent amount from time to time. The Petitioners crave leave of this Hon'ble High Court to refer and rely upon the agreements of other Tenants/Petitioners as and when required.”

11. There will thus be no controversy about the areas that are being occupied by these Petitioners going forward. There is no question of the Kalyan Dombivali Municipal Corporation being

required to recertify, reassess or remeasure these areas or of the Municipal Corporation certifying an area less than what is stated in paragraph 3 of the Petition.

12. This necessarily means that the tenants are entitled to at least these areas on a redevelopment (possibly more but not less). Whether this is on a tenancy or ownership basis will, as we said, depend on the nature of the development. Mr Tamboly may be correct that as a matter of public law and municipal law in particular, these redevelopments cannot be left to uncertainty. Tenants cannot be kept outside of their tenanted homes indefinitely. He submits that there is a clear lacuna in municipal law in that it does not provide or mandate a development proposal being made within a certain time after a building is brought down. The municipal law, whether under the Mumbai Municipal Corporation Act, 1888 or the Maharashtra Municipal Corporations Act, 1949 only requires the Municipal Corporation to assess whether a building is or is not structurally safe or unsound and to carry out certain works if those are found necessary. It does not contemplate a situation where the Municipal Corporation can mandate a property owner to submit a redevelopment proposal within a period of time, or to have a redevelopment proposal before demolition. Section 353B(6) is restricted in its operation and ambit This is obviously an area that will have to be examined in some appropriate matter.

13. However, on instructions Mr Sakhare states that it should be possible to submit a redevelopment proposal within 12 months of the building being evacuated. Previous benches have made similar

orders with similar time frames and that is the only reason that we are inclined to accept this.

14. It is, however, clear to us that the Municipal Corporation cannot allow such a property to remain brought down but without any form of further redevelopment indefinitely. Equally, the Petitioners as tenants who have been vacated whether under the Municipal law or the Rent Act for the purpose of redevelopment, are as a matter of law entitled to be rehoused in redeveloped premises. That is their right and it is engrafted in statute. Obviously, this means that the redevelopment must be done within a reasonable time. It is unthinkable that the tenants could be told that he or she must vacate the premises in question but need not be told or informed or kept informed of any redevelopment nor given any assurance of when that redevelopment will take place. That cannot be the mandate of the Maharashtra Rent Control Act, 1999 or of the corresponding provisions of the Municipal Corporation law. To this extent, Mr Tamboly may be correct that if the Municipal Corporation law permits the pulling down of a tenanted building without loss of tenancy rights, then it is equally incumbent upon the Municipal Corporation to insist upon a redevelopment that re-accommodates those very tenancies.

15. Reference may be had in this regard to Section 17 of the Maharashtra Rent Control Act, 1999 which does provide some form of a time frame for this purpose even if the municipal law does not. But the Rent Act is a special statute and operates in a different field from the MMC Act. The Rent Act casts no obligation on the

Municipal Corporation. The rights of the tenants under Rent Law must be harmonized with the obligations of the Municipal Corporation under the MMC Act in regard to tenanted structures. It is reasonable to hold, therefore, that the Municipal Corporation is empowered to demand the submission of re-development proposal for a tenanted structure (to the appropriate authority) and to demand compliance in a reasonable time, where the Municipal Corporation has required the demolition of a structure. We accept this as a correct statement in law and therefore permit the Petitioners to apply in a fresh Writ Petition if there is no redevelopment proposal submitted by Respondents Nos. 8 to 10 within one year of the rest of the building being evacuated.

16. The Petition is disposed of in these terms. There will be no orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 6th October 2023. The corrections are shown in bold, italics and underline.