

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.136 OF 2023

1. Mr. Prashant S. Sawant
Age 54 years, Occ:Service
Having address at:
Flat No.4, Pushparaj Society,
Manisha Nagar, Kalwa, Thane
2. Mr. Jitendra D. Rahate
Age : 50 years, Occ : Service
Having address at :
2/302, Anand Kirti Society
Chendani Koliwada, Subhash Nagar
Thane (East)
3. Mr. Nilesh Gamare
Age: 50 years, Occ:Service
Having address at :
8 A/3, N.M.M. Kamgar Co-OP Hsg.Soc.
Mumbai-Pune road, Kalwa, Thane
4. Mrs. Usha Mane
Age 64 years, Occ: Homemaker
Having address at :
11 B/13, N.M.M. Kamgar Co-OP Hsg.Soc.
Mumbai-Pune road, Kalwa, Thane
5. Mr. Prakash Ghadi
Age : 59 years, Occ: Retired
Having address at :
9 A/12, N.M.M. Kamgar Co-OP Hsg.Soc.
Mumbai-Pune road, Kalwa, Thane

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.... Petitioners.

Versus

1. Thane Municipal Corporation
Through its Commissioner,
Having his office at -
Thane Municipal Corporation,
Panchpakhadi, Thane.
2. The Town Development Planning Officer
Town Planning Department,
Thane Municipal Corporation,
Having his office at-
Thane Municipal Corporation,
Panchpakhadi, Thane
3. N.M.M.Kamgar Co-operative
Housing Society Ltd.
Having its office at
N.M.M. Society premises, Opp ICICI Bank,
Old Mumbai-Pune Road, Kalwa West
4. Ashar Ventures
Having its office at
Ashar IT Park, B Wing, Road No.16Z
Wagle Estate Thane (west) 400 604
5. Saakar Architects
Through its Proprietor Shri Sandip Prabhu
Having its office at
1st Floor, Mohan Heritage Building,
2nd Floor, Nakshatra, Wing 'A',
Near TMC Almeida Road,
Panchpakhadi Above Saraswat Bank,
Thane (West) 400601 Respondents.

Mr Suhas Oak a/w Mr Vinod Utekar a/w Mr Nikhil Shinde a/w Mr A. Mehta i/b Mr Vijay Nene for the Petitioners.

Mr R.S.Apte, Senior Advocate i/b Mr Anand Kulkarni for Respondents no.1 and 2.

Mr. Ranjit Thorat, Senior Advocate a/w Mr Pradeep Thorat a/w Ms Ekta Tripathi a/w Mr Vishal Acharye a/w Mr Shyam Jadhav for Respondents no.3 to 5.

**Coram : G.S.Kulkarni &
R.N.Laddha, JJ.**

Date : 7 July 2023.

Judgment (Per R.N.Laddha,J.)

The petitioners have filed this petition under Article 226 of the Constitution of India to challenge the actions of respondents no.1 and 2. The petitioners contend that respondents No.1 and 2 have approved the plan and layout of redevelopment and granted permission for development and the commencement certificate thereafter in contravention of the provisions of the Maharashtra Regional Town Planning Act (for short 'MRTP Act') and Regulations under the Unified Development Control and Promotion Regulations, 2020 (for short 'UDCPR 2020').

2. It is the case of the petitioners that respondent no.3/Society

originally had 452 members who were living in buildings no.1 to 13 standing on the land bearing CTS Nos.2459, 2460, 2461, 2546, 2547, 2490, 2491 and 2492 admeasuring 17,196 sq. mtrs., situated at old Mumbai, Puna road, Kalwa, Thane. The Deputy Registrar, Cooperative Societies Thane passed an order on 13.7.2018 under Section 17 of the Maharashtra Cooperative Societies Act 1960 (for short MCS Act) r/w Rule 16 of the Maharashtra State Cooperative Societies Rules (for short 'MCS Rules') separating building no.3 from respondent no.3/ Society and dividing the larger land into (i) land bearing CTS No.2546, 2490, 2491 and 2492 admeasuring 2511.27 sq. mtrs. together with building no.3 and other structures on it. ii) After this order, respondent no.3/Society had 384 members out of a total of 452 members excluding 68 members who were occupants of building no.3 on the said land.

3. Thereafter, before the demarcation of the boundaries of respondent no.3/Society's land and the said (proposed) earmarked Neo Land as per the said order dated 13.7.2018 and updating/recording of entries to that effect in the revenue records, respondent no.3/Society executed a development agreement and registered it with the office of Sub-Registrar of Assurances at Thane on 3.11.2021. Many members, including petitioners, objected to the execution of said development agreement for various reasons. The development agreement authorises respondent

no.4/Developer to redevelop respondent no.3/Society's land as per the terms and conditions set out therein. Accordingly, Respondent no.4/Developer has proposed and agreed to give and allot free of cost and on an ownership basis, each member of respondent no.3/Society, a residential flat measuring 421 sq. mtrs. i.e. 39.11 sq. mtrs. carpet area in the proposed new building.

4. The petitioners, who are members of respondent no.3/Society, repeatedly made several representations and expressed their grievances to the managing committee of respondent no.3/Society as well as respondent no.4/Developer and respondent no.5/a licensed Architecture firm registered with the Council of Architecture and appointed as Project Management Consultant (for short 'PMC') for the redevelopment of the land of respondent no.3/Society regarding the proposed allotment of lesser carpet area compared to similar development projects carried out in the city and also raised their concern about implementing the order dated 13.7.2018 passed by the Deputy Registrar Cooperative Society, Thane regarding the division of the larger land before executing the development agreement and applying for sanction of plan and layout of redevelopment and grant of permission.

5. The petitioners also informed the management committee of respondent no.3/Society, respondent no.4/Developer and

respondent no.5/PMC that the Additional Collector Thane vide order dated 19.11.1971 granted permission to respondent no.3 to change the said larger land earlier earmarked as agricultural land into non-agricultural land for housing purposes and imposed certain conditions for using the said non-agricultural lands. One of the conditions in the said order prohibited any other use of land other than the use for which the permission was given, i.e. the said non-agricultural land was permitted only for housing purposes. Therefore the layout and plan for the redevelopment of respondent no.3's land can not have any commercial units. Despite that, respondent no.4/Developer and respondent no.5/PMC, in violation of the said order and concerns raised by the petitioners, submitted the layout/plan for the redevelopment of respondent Society's land comprising residential and commercial units.

6. The petitioners allege that respondent no.5/PMC did not act professionally as a registered accredited Architect and as a project management consultant by failing to inform the respondent Society properly about the actual area entitlement of the members, despite their representations and requests. Ignoring the issues raised by the petitioners, respondents no.3 and 4 executed a development agreement on 3.11.2021, and respondent no.4/Developer applied to respondent no.1 for permission to redevelop respondent

no.3/Society's property. Respondent no.1 approved the redevelopment and issued a commencement certificate on 12.1.2022.

7. The petitioners assert that as members of respondent no.3/Society, they are entitled to a minimum area of 461 sq.ft. (42.87 sq.mtrs.) as per Rule 10.2.10 of UDCPR, 2020. However, as per the sanctioned plan, each member will get only 421 sq.ft. (39.12 sq.mtrs). Therefore, the petitioners have been deprived of their basic area rights, and the approved plan violates regulation 10.2.10 of UDCPR 2020. Moreover, it is the contention of the petitioners that the order dated 13.7.2018 passed by the Deputy Registrar Cooperative Societies Thane has not been implemented by respondent no.3/Society regarding the actual division of land. Some members of the respondent Society, who are petitioners in this case, had raised their objections verbally and in writing to the officers of respondent no.1 about the proposed allocation of less carpet area entitled than what they are under UDCPR, 2020 and also about the non-implementation of the order dated 13.07.2018 passed by the Deputy Registrar Cooperative Societies Thane that required the separation of a larger land into respondent no.3/Society's land and the said (proposed) earmarked Neo Land due to the sub-division of respondent no.3/Society and separation of

building no.3 and updating the revenue record before executing the development agreement and applying for approval of development plan and layout.

8. The petitioners complain that despite their representation, the respondent Corporation sanctioned the plan/layout and granted permission to redevelop and issued a commencement certificate to the respondent/Developer in blatant violation of MRTP Act and UDCPR 2020 and order dated 19/11/1971 passed by the Additional Collector, Thane that allowed the use of the said land only for housing purposes.

9. The petitioners then made a representation to the respondent Corporation requesting to revoke/cancel the approval of the plan/layout of the redevelopment of the respondent Society and the commencement certificate issued thereof. However, the respondent Corporation did not take appropriate action.

10. In the circumstances, the petitioners have approached this Court, in the present proceedings praying for the following reliefs :

“(a) Writ of mandamus or any writ in the nature of mandamus or any other appropriate writ, order directing the Respondent Nos.1 and 2 (i) to revoke permission for development granted vide Sanction of development dated January 11, 2022 and Commencement Certificate dated January 12, 2022

Exhibit-E Colly. hereto and sanctioned plan/layout Exhibit-D hereto ; (ii) to make an appropriate enquiry against the Respondent No.3 as to why the plans are submitted contrary to the provisions of UDCPR 2020 and sanctioning of the same by the officers of Respondent No.1 and take appropriate action particularly against the officers of Respondent No.1 and Respondent No.5 PMC.

(b) Pending the hearing and final disposal of this Petition, the Respondent Nos.1 and 2 be directed to take immediate steps to stop the construction/development commenced on the said Respondent No.3 society's land;

(c) For such further and other reliefs as the nature and circumstances of the case may require.”

11. The respondents have appeared; however, except respondent No.4/Developer, none of the respondents filed a reply affidavit.

12. Mr Suhas Oak, the learned Counsel appearing on behalf of the petitioners, submitted that since the existing built-up area of respondent Society is 11433.67 sq. mtrs, the incentive FSI should be either 50% of 11433.67 sq. mtrs. i.e. 5716 sq. mtrs. or 15 sq. mtrs per tenement i.e. total 384 tenements multiplied by 15 sq. mtrs. being 5760 sq. mtrs. whichever is more. He submitted that respondent no.4/Developer had taken the higher of the two, i.e. 5760 sq. mtrs., but the same benefit has not been passed on to the members of respondent Society. The respondent Developer should have given 461 sq.ft., i.e. 42.87 sq. mtrs., the minimum basic

entitlement of the petitioners being 27.87 plus 15 sq.mtrs., as per the FSI claimed under regulation 10.2.10 of UDCPR, 2020. However, the respondent Developer denied the basic minimum entitled area to the petitioners.

13. Mr Suhas Oak made a grievance that though the property of the respondent Society is within 30 mtrs. from the railway boundary, the respondent Developer has not obtained the No Objection Certificate from the railway authority. He submitted that despite gross violations of UDCPR 2020, the respondent Corporation and respondent Planning Officer had approved the plan and issued Commencement Certificate. It is submitted that the order dated 13.7.2018 of the Deputy Registrar Cooperative Societies Thane has not been executed by actual division of the larger land into respondent Society's land consisting of buildings no.1, 2 and 4 to 13. The said proposed earmarked Neo Land on which buildings no.3 stands and recording/updating of entries accordingly in the revenue record. In his view, the sanctioned plan is flawed and illegal as the area reserved for recreational ground for the proposed development of a new building on respondent Society's land has been marked and shown on the said/proposed earmarked Neo Land on which separated building no.3 stands.

14. Mr Suhas Oak has next submitted that the approval of the plan/layout of the redevelopment, which includes residential and commercial units and Commencement Certificate issued by the respondent Corporation and its officers are in clear violation of the order dated 19.11.1971 passed by the Additional Collector, Thane which permits the use of the said land only for housing purposes and prohibits any other use of the said land. Accordingly, it is submitted that the present petition be allowed, and the impugned order and the commencement certificate be quashed and set aside.

15. Mr R. S. Apte, learned Senior Counsel for respondents no.1 and 2 and Mr Ranjit Thorat, learned Senior Counsel appearing on behalf of respondents no.3 to 5, contested the contentions of the learned Counsel for the petitioners. They submitted that as members of the respondent Society, the petitioners are aware of the resolutions passed in the general body meetings of the respondent Society from time to time and also know about the redevelopment agreement dated 3.11.2021 and the Power of Attorney given by respondent Society to respondent no.4 /Developer. They submitted that the general body of the respondent Society is the highest authority, and the decisions related to the redevelopment of the property taken by the general body are binding on the petitioners.

16. Further, Mr Thorat, learned Senior Counsel for respondents no. 3 to 5 submitted that in the special general meeting held on 28.2.2021, a resolution was passed for the redevelopment of the said property. It was decided in the said general meeting that all the buildings of the society, i.e. buildings no. 1, 2 and 4 to 13, were over 40 years old, had become ruinous, and were in dilapidated condition. Respondent no.3/Society, after following the requisite procedure and directives/guidelines issued by the Government of Maharashtra, decided to go for the redevelopment of the property. The requirements under the relevant laws are duly complied with, the tender was issued, and as per the decision in the general body meeting held on 12.6.2021, respondent no.4 was chosen as the developer of the said property. He submitted that 281 members voted for respondent Developer, and no one voted against this respondent-Developer. Therefore, a resolution was passed in a special general meeting on 12.6.2021 by which respondent no.4/Developer was selected as the successful bidder for the redevelopment of the project. The general body meeting was attended by the Deputy Registrar Cooperative Societies Thane. Accordingly, the said officer also issued a No Objection Certificate (NOC) for property redevelopment by respondent no.4/Developer.

17. Relying on the judgment of this Court in *Choice Developers*

*Vs. Pant Nagar Pearl CHS Ltd.*¹, Mr Thorat argued that the minority/dissenting members couldnot act against the will of the majority members of the society and obstruct the redevelopment. He submitted that in the present case, 324 out of 384 members of the respondent Society have consented to the redevelopment of the subject property by this respondent Developer. All the members of the respondent Society have already vacated the respective premises, and all 12 buildings were pulled down.

18. It is submitted that the respondent-Developer has already executed permanent alternate accommodation agreements with almost 324 members. It is submitted that Clause No.4 of the redevelopment agreement provided that the respondent Developer as and by way of consideration for development shall provide free of cost a new flat admeasuring 421 sq.ft. as against the existing 281 sq.ft. to each member of the respondent-Society.

19. The learned Senior Counsel for the respondents in unison argued that Rule 10.2.10 of UDCPR 2020 does not apply to this case as the development agreement was signed on 03.11.2021. Rule 10.2.10 deals with FSI available on payment of premium or otherwise for the redevelopment of the building of the Society and also what can be built. According to them, this Rule does not say

¹ AIR OnLine 2022 BOM 2041.

what area should be given to the members of the society except that it was mandatory that if the residential tenement in the existing building is less than the carpet area of 27.87 sq. mtrs, then such tenement should get minimum carpet area of 27.87 sq. mtrs. and respondent/developer has already given each member the area measuring 39.12 sq. mtrs. which is more than the required area.

20. Regarding the permission from the railway authority it is submitted that the State of Maharashtra, by its notification dated 10.06.2022, has changed the development plan to provide for 30 mtrs wide DP Road next to the property of railways. It is submitted that no construction is planned to be done within 30 mtrs of the railway boundary anyway. The respondent-Corporation approved building plans on 20.06.2022, so a No Objection Certificate from the railway is not needed.

21. Further, the learned Senior Counsel appearing on behalf of the respondents in unison submitted that construction of commercial premises is permissible under Rule 3 of UDCPR 2020, which also included in clause 16 of the redevelopment agreement and respondent-Society has agreed to it. It is submitted that even before the redevelopment process started, there were shops in the Society. Taking into consideration all these aspects the respondent Corporation sanctioned the plan.

22. As regards to the non-implementation of an order dated 13.7.2018 is concerned, the learned Senior Counsel submitted that building no.3 is already demarcated and separate and independent from other buildings. It has separate and independent access from the main road. Moreover, petitioners are not the residents of building no.3 and are not affected by the demarcation or otherwise. He submitted that none of the occupants of building no.3 has objected to the redevelopment of property of respondent-Society.

23. Mr Thorat, the learned Senior Counsel submitted that Respondent No.4/Developer has spent/invested Rs. 106.92 Crores upto 28.02.2023. The details of which are given in paragraph no. 13 (k) of the affidavit-in-reply dated 21.03.2023 filed on behalf of respondent no.4/Developer. It is submitted that the respondent Developer gave notice to members to vacate premises on 14/01/2022. All members of the respondent-Society have vacated their respective premises and have moved to alternate accommodation temporarily. The respondent Developer has signed permanent alternate accommodation agreements with over 324 members, and all are registered. Learned Senior Counsel further submitted that these petitioners are not cooperating with the respondent-Developer and are not signing a permanent alternate accommodation agreement only with malafide intention to satisfy

and fulfil their illegal demand for an additional 40 sq.ft. area.

24. It is submitted that respondent no.4/Developer has followed all requisitions, got all the required permissions, approvals and sanctions from the statutory authorities, and further started construction work as per the redevelopment agreements' terms and conditions.

25. According to them there is no flaw in the impugned order and the commencement certificate, and the same should not be disturbed by this Court exercising writ jurisdiction.

26. The rival contentions now fall for our determination.

27. The petitioners claim that the area given by respondent no.4/Developer is less than what Rule 10.2.10 of UDCPR 2020 requires. However, the learned Senior Counsel for the respondents, rightly pointed out that Rule 10.2.10 of UDCPR 2020 was inserted by an amendment dated 02.12.2021. The development agreement was signed on 3.11.2021 by respondent no.3/Society in favour of respondent no.4/Developer. This clearly shows that the development agreement was executed before the amendment dated 2.12.2021. It is pertinent to note that the general body of the respondent-Society passed a resolution on 28.02.2021.

28. It is undisputed that if the permission/sanction is already granted as per the earlier regulations, the same should be continued to be available/valid till the construction is completed. Thus, in our opinion, the reliance placed by Mr Suhas Oak, learned Counsel for the petitioners, on the provisions of UDCPR 2020 is misplaced.

29. Moreover, Rule 10.2.10 of UDCPR 2020 provides for FSI available on payment of premium or otherwise for redevelopment and also what can be constructed. The learned Senior Counsel for the respondents, are right in arguing that this Rule does not specify what area should be given to the members of the Society except that it was mandatory that if the residential tenement in the existing building is less than the carpet area of 27.87 sq. mtrs., then such tenement shall get minimum carpet area of 27.87 sq. mtrs. In the present case, the respondent-Developer has already given the area measuring 39.12 sq. mtrs. (421 sq.ft.), which is more than the required area, for each member of the Society.

30. As far as the petitioners contention that the respondent-Developer has not obtained permission from the railway authority as the structures are within 30 mtrs. from the railway boundary is concerned, the learned Senior Counsel have rightly drawn our attention to the notification dated 10.06.2022 which modified the

development plan to provide 30 mtrs. wide DP road adjoining to property of railways. Besides, as submitted, no construction is proposed to be done within 30 mtrs of the railway boundary in any case. Moreover, the respondent-Corporation has also approved building plans on 20.06.2022.

31. Regarding the petitioners contention that the respondent-Developer is not allowed to construct commercial/non residential premises, we agree with the learned Senior Counsel for the respondents, who rightly invited our attention to Rule 3 of UDCPR 2020. A bare perusal of Rule 3 shows that construction of commercial premises (residential plus commercial) is allowed. Moreover, Clause 16 of the development Agreement permits the construction of commercial premises.

32. Further, it is the grievance of the petitioners that the order dated 13.07.2018 has not been implemented by the actual demarcation of the larger land into respondent no.3/Society's land comprising of buildings no.1, 2 and 4 to 13 and the said proposed earmarked Neo Land on which the building no.3 stands and recording/updating of entries accordingly in the revenue record are false and incorrect. In this respect, however, nothing is brought on record to substantiate this allegation by the petitioners.

33. On the other hand, learned Senior Counsel for the respondents in unison submitted that the actual demarcation of building no.3 is already done, and is separate and independent from other buildings. It also has separate and independent access from the main door. Moreover, none of the residents of building no.3 has raised any objection to the redevelopment of the property of respondent no.3/Society, and construction is going on at full speed.

34. It is not in dispute that all the buildings of respondent no.3/Society are over 40 years old and were in ruinous condition. It is undisputed that respondent no.3/Society decided to redevelop subject property in its special general body meeting held on 28.2.2021. It is not in dispute that out of 298 members present in the general body meeting of respondent no.3/Society, respondent no.4/Developer was chosen by the majority of 281 votes. A resolution was passed accordingly.

35. After that, a redevelopment agreement was signed on 3.11.2021 and was registered with the Sub-Registrar Assurances, Thane, on 25.11.2021. It is also undisputed that out of the total members, 324 have signed the agreement, and the respondent-Developer has paid expenses towards stamp duty and registration

charges. It is undisputed that the Deputy Registrar Cooperative Society has also given its No Objection for the redevelopment of the subject property.

36. It is not in dispute that all the members of respondent no.3/Society have vacated their respective premises in the Society buildings. Respondent-Developer has executed permanent alternate accommodation agreements with over 324 members, and all are registered, but the petitioners have not executed the permanent alternate accommodation agreements.

37. Further, it is undisputed that existing structures/12 buildings have already been demolished by respondent no.1/Corporation as buildings were in dangerous conditions. Moreover, it is a settled position in law that minority members cannot go against majority members' will and stop redevelopment. They cannot make other members who have already vacated suffer. They cannot cause delays to other members in completing redevelopment work, resulting in project costs increasing every day. Such an approach harms the majority of members. It is also a settled position in law that once a person becomes a member of Society, he loses his individuality and has no independent rights except those given by the statutes and by-laws.

38. For all the above reasons, the petition fails and is dismissed accordingly.

[R.N.Laddha, J.]

[G.S.Kulkarni, J.]