

Shubhada S Kadam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4564 OF 2022

Savitri Anandrao Gole & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

Mr Dharam Sharma, with Uma Sharma, i/b Dharam & Co. for the
Petitioners.
Mr SB Gore, AGP, for the Respondent-State.
Mr Ashutosh M Kulkarni, with Gaurav Sharma, for the Respondents
Nos. 2 and 3.
Mr Rubin Vakal, with Vileena Mirasee, i/b/. Shah & Sanghavi, for the
Respondents Nos. 4 to 7.

CORAM G.S. Patel &
S.G. Dige, JJ.
DATED: 10th January 2023

PC:-

1. According to us, this Writ Petition is completely misconceived.
2. There is a property in a crowded area of Mumbai in Bhuleshwar. This is near C. P. Tank. There are two structures known as 'Khakkar Building' and 'Magan Building' on this plot. The buildings were cessed and each was or is ground plus four floors. There are altogether 100 tenants.

3. Respondent No. 4 is a limited liability partnership. It is a developer. Respondents Nos. 5 to 7 are partners, but they are also owners of the property in question.

4. Respondents Nos. 4 to 7 maintain that they have the consent of 80% of the tenants and are prepared to proceed with the redevelopment. The difficulty is that these are mixed-use structures, i.e., that there are residential and commercial tenants. The structures are dilapidated. The residential occupants have vacated. The commercial occupants are still on site.

5. The disagreement between the occupants and the owners/Developers is that the commercial occupants demand premises on the ground floor with road access and frontage. They will not accept commercial premises on a higher floor. The location of the site and because a portion of the plot will have to be surrendered for setback, road widening and other public purposes as required by the Development Control Regulations, apparently make it unfeasible for the Developer to accommodate every single one of the commercial tenants or occupants on the ground floor. Who should be allotted premises on the ground floor and who should be allotted premises on the upper floors is not a matter that lends itself to a decision in our writ jurisdiction. There may be many ways to work around this, including possibly conducting a lottery in an open and transparent manner. We have nothing to say in that regard.

6. MHADA, for its part, says that the buildings are seriously dilapidated. They pose an imminent threat not only to the

commercial occupants who are still on site but to others in the vicinity and to those using the abutting public road.

7. It is pointless for the Petitioners to say that they are not opposing redevelopment *per se* when indeed it is precisely this that they are doing — for they want a redevelopment in a particular manner, as per their wishes, as decided by them.

8. Mr Sharma's submissions that 'this can be worked out with the developer' and that the court 'should do something' do not commend themselves to us in the least. We do not fashion contracts for parties. We cannot decide the terms of the understanding or agreement between the owners/Developers and the occupants/tenants. It is always open to the occupants, or at least the required majority, to enter into an appropriate a redevelopment agreement with the Developer. This is a matter of contract not mandamus.

9. On behalf of MHADA, it is pointed out that if the occupants cannot successfully negotiate terms with the owners for development, then it is always open to the tenants/occupants to form their own society in accordance with law to appoint a developer or take up self-development. MHADA is there to assist, oversee and regulate. It is not possible for MHADA to force a contract on the parties. It can grant a no objection certificate to a chosen developer, but that choice has to be made by the tenants/occupants. It is even less possible for this Court in its writ jurisdiction to enter into the arena and force the owners or

developer to execute a particular kind of agreement with the tenants/occupants.

10. As we see it, apart from saying that there is a problem, the tenants and occupants have set out no legally enforceable right that they can canvass before a writ Court. The matter is squarely one that requires negotiation between tenants/occupants and the owner/developer or requires that the tenants/occupants organise themselves into a legally recognized juristic entity as contemplated by law.

11. There is, lastly, no demand for justice sufficient to order the issuance of a writ of mandamus. That law is well settled. Without such demand, no writ of mandamus can be issued. Indeed, there *can* be no demand for justice because there is no failure (as yet) on the part of MHADA that can be judicially reviewed in writ jurisdiction.

12. It may be possible for tenants/occupants to adopt other remedies. We leave those remedies open. We have said nothing on the merits of the case between the tenants/occupants and the owners/developers.

13. We see no merit in the writ petition. It is rejected. No costs. All previous interim and ad-interim orders stand vacated.

(S. G. Dige, J)

(G. S. Patel, J)