

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 575 OF 2023
WITH
LEAVE PETITION (L) NO. 2918 OF 2020
AND
INTERIM APPLICATION (L) NO. 27757 OF 2021
IN
WRIT PETITION NO. 575 OF 2023**

Chetan Karsan Gosia & Ors. ... Petitioners
Versus
Mumbai Corporation of Greater Mumbai
through its Commissioner & Ors. ... Respondents

**WITH
INTERIM APPLICATION (L) NO. 28431 OF 2021
IN
WRIT PETITION NO. 575 OF 2023**

Valencia and Mishal Venures Pvt. Ltd. ... Applicant
Versus
Chetan Karsan Gosia & Ors. ... Respondents

Mr. Vaibhav Charalwar a/w Mr. Abhishek Adke and Mr. Sagar Vichare
i/by Abhishek Adke for the Petitioners.

Mr. A. Y. Sakhare, Senior Advocate a/w Ms. Pooja Yadav i/by Sunil
Sonawane for the Respondent-MCGM.

Mr. Dinyar Madon, Senior Advocate a/w Mr. Sharad Wakhcure, Mr.
Ziyad Madon, Ms. Paricher Zaiwala i/by Ms. Neuty N. Thakkar for the
Respondent No.5.

**CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE : 31st MARCH, 2023

PC. :-

. Heard Mr. Charalwar, learned counsel for the petitioners, Mr.
Sakhare, learned Senior Counsel for the respondent-MCGM and Mr.
Madon, learned Senior Counsel for the respondent no.5.

2. The petitioners are municipal tenants. The building in which the petitioners were housed had become dilapidated and was required to be pulled down. It was demolished in September 2016. The tenants of the buildings have formed a society/federation so as to undertake redevelopment of the buildings i.e. construction of a new buildings. Accordingly, they have entered into two agreements with respondent no.5-developer. The Municipal Corporation has a policy to provide a transit accommodation to the municipal tenants till the redevelopment is completed. However, it is more than clear that the petitioners do not intend to occupy the transit accommodation being provided in a brand new building. The petitioners are insisting for transit rent, that is money in lieu of transit accommodation. Accordingly, they have approached this Court.

3. At the outset, Mr. Madon, learned Senior Counsel for the respondent no.5, drawing our attention to the prayers and the averments as made in the petition has raised an objection to the maintainability of the petition. He submits that this petition filed under Article 226 of the Constitution, if at all seeks to enforce pure contractual obligations, which even the contract/development agreement does not provide. It is submitted that the prayer is for a money claim, namely, for transit rent, which the contract itself does not provide.

4. Mr. Madon has also drawn our attention to the prayers as made

in the petition, we may refer to the prayers as made in the Writ Petition, which read thus:

“a. That this Hon'ble Court be pleased to issue a writ of Mandamus and/or such other writ or Order or direction as this Hon'ble Court deems fit, directing Respondent No. 2/Respondent No.4 to call upon Respondent No.5 or directing Respondent No.5 to deposit the outstanding payment of monthly temporary accommodation rent with the tenants as per the Sheet annexed as Exhibit JJ to this Petition within a period of 15 days from the date of such direction/Order.

b. That this Hon'ble Court be pleased to issue a writ of Mandamus and/or such other writ or Order or direction as this Hon'ble Court deems fit, directing Respondent No.2/Respondent No.4 to call upon Respondent No.5 or directing Respondent No.5 to deposit with the tenants the amounts towards monthly temporary accommodation rent for a period of 12 months starting from June 2020 within a period of 15 days from the date of such direction/Order.

c. Alternatively, this Hon'ble Court be pleased to issue a writ of Mandamus and/or such other writ or Order or direction as this Hon'ble Court deems fit, directing Respondent No.2/Respondent No.4 to terminate the appointment of Respondent No.5 as the developer of the Suit Property and in its place appoint a financially sound and experienced entity as a developer of the Suit Property in accordance with the law and provisions of LoI dated 19.03.2016 and revised LoI dated 03.04.2017.

d. That this Hon'ble Court be pleased to issue a writ of Mandamus and/or such other writ or Order or direction as this Hon'ble Court deems fit, directing Respondent No.2/Respondent No.4 to call upon Respondent No.5 or directing Respondent No.5 to supply the said Federation all the necessary documents relating to redevelopment of the Suit Property at all relevant times within 7 days from receiving such demand from the said Federation.

c. That pending final adjudication of the present Petition, this Hon'ble Court be pleased to issue an interim Order directing Respondent No.2/Respondent No.4 to call upon Respondent No.5 or an interim Order directing Respondent No.5 to start depositing monthly temporary accommodation rent starting from July 2020 with the tenants.

f. That pending final hearing and disposal of the Petition, this Hon'ble Court be pleased to issue an interim Order directing

Respondent No.5 to supply copies of (a) Development Agreement dated 18.07.2016, (b) Power of Attorney dated 18.06.2016, (c) Sanctioned Plans and (d) all the NOCs/Permissions obtained by Respondent No.5 so far in respect of redevelopment of the Suit Property.

g. Ad-interim in terms of prayer clause (e) and (f).”

5. Mr. Madon has also supported his objection on maintainability by referring to a decision of a Division Bench of this Court in the case of ***Ratna Sindhu S.R.A. Co-operative Housing Society (Proposed) v/s. The State of Maharashtra & Ors.***¹

6. After hearing the learned counsel for the parties and with their assistance, perusing the relevant documents, we are more than certain that the petition is thoroughly misconceived and not maintainable. The writ petition simplicitor is for prayers for issuance a writ of mandamus for enforcement of frights arising from and under a contract, namely, under the development, agreement entered between the proposed society, of which the petitioners allege that they are members. The said agreement is entered by the petitioners' proposed cooperative housing society/federation with respondent no.5-developer. There is yet another agreement, namely, a tripartite agreement, which was proposed to be entered between the Municipal Corporation, the society [Chandanwadi B.I.T. Chawl Federation (proposed)] of which the petitioners are members and respondent no.5-developer, which also do not indicate any enforceable legal right to claim a transit rent for this Court to issue a writ against the Municipal Corporation. This is the nature of the petition.

¹ Writ Petition (Lodging) No. 6823 of 2020 decided on 22 June 2021.

7. We have repeatedly asked Mr. Charalwar to point out the legal rights of the petitioners in its true sense which stand infringed, so as to enable us to issue a writ in terms of what has been prayed for.

8. In responding to our query, Mr. Charalwar firstly has drawn our attention to Regulation 33(7) of the Development Control and Promotion Regulation, 2034 (for short '**DCPR 2034**') under which he says that the redevelopment of the building was proposed. On a perusal of the said regulation, Mr. Charalwar is not in a position to point out anything in such regulation of the DCPR 2034, that there is any obligation on the Municipal Corporation to compensate the petitioners and other tenants by making payment of any transit rent to be paid by the developer.

9. Having failed to point out any provisions under the Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act'), as also under the Regulations of the DCPR 2034, Mr. Charalwar now makes a lame attempt to draw our attention to a circular dated 10 October 2016, issued by the Municipal Corporation. The said circular itself was not in existence under the redevelopment agreement was entered into between the residents of the building and the Chandanwadi B.I.T. Chawl Federation and the respondent no.5-developer. Be that as it may, what has been referred by Mr. Charalwar in the circular is Clause A(c) at page 3 of the circular, which provides for acceptance of proposal along with original consent as per draft Annexure-II submitted by society/developer, which provides as under:

"c) Acceptance of proposal alongwith original consents as per draft Annexure-II submitted by the Society/Developer:

The proposed Society formed by the tenants will have to submit their redevelopment proposal along with consents of minimum 70% tenants of the said property out of which minimum 75% consents (of 70%) shall be of principle tenants and remaining 25% of original consents shall be of the legal heir transfer cases/sub tenants transfer cases which shall be in process at ward level. However the application for such transfer cases shall be made by the Society/Developer prior to date of submission of proposal.

In order to complete transfer cases in time it is proposed to recover Security Deposit of Rs.50,000/- per tenants whose transfer cases are pending subject to maximum Rs.25,00,000/-. On compliance of the same the security deposit will be adjusted with the amount of capitalized value to be paid or with other premiums due in the proposal. However interest on the deposit amount will not be paid.

If the Society/Developer fails to get the legal heir transfer cases/sub tenants transfer cases approved from MCGM and thereafter to Establish minimum 70% consent of Principal Tenants, to the scheme, including such transfer cases as mentioned above, before Consent Verification Committee meeting, then the deposit paid as above will be forfeited and the proposal will be recorded.”

10. In our opinion, the reliance of Mr. Charalwar as placed on Clause A(c) of the circular (supra) is totally misconceived. Such clause of the circular does not indicate any obligation whatsoever on the either the Municipal Corporation or the developer appointed to pay any transit rent. In fact what we see is that the obligation of the developer/Mumbai Municipal Corporation towards the petitioners, who are municipal tenants, is to provide for a transit accommodation, which has already been provided and/or made available in a new building belonging to the Municipal Corporation. Such buildings, to accommodate the petitioners and the other tenants, are lying vacant. The petitioners appear to be adamant and do not intend to shift to such transit accommodation Clause M of the said circular, in that regard, reads thus:

“M) NOC to C.C. for Rehab :-

A.C. (Estate) office shall issue the NOC's to CC for rehab building on compliance of Annexure II / LOI conditions and on recovery of Capitalized value as per the policy in force in that respect P. R. Card shall be insisted in favor of MCGM before granting NOC to C.C for Rehab. It shall be also confirmed that the arrangement for transit accommodation has been made by the Society/Developer for the tenants before granting NOC to C.C. to rehab. Asst. Engineer (Imp) of A.C. (Estate)'s Office shall preserve all the correspondence related to issuance of NOC to CC to rehab.”

11. This apart, the petition came to be filed on the basis of the tripartite agreement dated 17 June 2017, which is entered with the Chandanwadi B.I.T. Chawl Federation, the respondent no.5-developer and the Municipal Corporation, although not executed by the Mumbai Municipal Corporation for the reasons that, at the relevant time, the society/federation of the tenants was not registered. Such agreement was preceded by an earlier agreement, namely, the development agreement dated 18 July 2016 which entered between the Chandanwadi B.I.T. Chawl Federation and the respondent no.5-developer. Even if we consider such tripartite agreement, which is not stated to be signed on behalf of the Municipal Corporation, in Clause 13 of the said tripartite agreement, it was agreed between the parties for providing of a transit accommodation. There is no provision/ clause in the tripartite agreement that a transit rent was required to be paid by respondent no.5-developer, which is the only prayer in the petition. The relevant clause being Clause 13 of the said agreement needs to be noted, which reads thus:

“13. It shall be the responsibility of the Developers to provide the temporary transit accommodation to the Municipal eligible tenants/ occupants of the existing chawls/buildings at their cost during the period of reconstruction and the Municipal Corporation of Greater Mumbai shall not provide and/or be not liable for providing any transit accommodation or alternative accommodation. Shifting of

tenants/occupants from existing tenements to temporary transit and again from temporary transit to newly constructed rehab building/s shall be the sole responsibility of applicant Society/Federation/Developer.”

12. Thus, what can be clearly seen is that the petitioners intend to enforce rights which are not even part of the development agreement, tripartite agreement and that too in a writ petition under Article 226 of the Constitution of India. Not a semblance of case has been made out for infringement/ violation of any legal right by the Municipal Corporation even the contractual rights.

13. In fact, as submitted by Mr. Sakhare, learned Senior Counsel for the Municipal Corporation, the Municipal Corporation has repeatedly called upon the petitioners and all other tenants to occupy the transit accommodation which is kept ready, and which is certainly in consonance with the beneficial policy of the Municipal Corporation to accommodate municipal tenants in such transit accommodation till the redevelopment is complete. If fact, the stand taken by the petitioners is not only contrary to the circulars of the Municipal Corporation but also contrary to their own agreements as entered with the respondent no.5-developers.

14. Mr. Madon, would be correct in placing reliance on the decision of a Division Bench of this Court in ***Ratna Sindhu S.R.A. Co-operative Housing Society (Proposed)*** (supra) wherein this Court, although in a case of a slum society, has taken a similar view that any action sought to be brought about against the developer by invoking writ jurisdiction in the absence of any breach of any legal rights or constitutional

rights, are matters falling within the realm of the contract, namely, the development agreement. A writ petition to enforce such contractual rights could not be maintainable. The Division Bench of this Court, in such context, has made following observations:

“..... It would be too ambitious for the petitioner to assume that the Court in exercise of its powers under Article 226 would pass any orders on reliefs which can be sought either before the statutory authority or in a civil suit.”

15. We are more than certain that this petition is totally misconceived. It cannot be entertained for the prayers as made for. If the petitioners have any contractual rights, they are free to assert such rights in appropriate proceedings.

16. Petition is accordingly dismissed. No costs.

17. All the observations as made above are purely in the context of the maintainability of the present proceeding. Petitioners are free to agitate all their contentions, including arising under the agreements in question, in appropriate proceedings. All contentions of the parties on any such disputes are expressly kept open.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]

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