

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2248 OF 2023

U.Y. Industries Pvt Ltd & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Mayur Khandeparkar, *with Vikram Goel, i/b Ashok Goel, for the*
Petitioners.

Ms Pooja Yadav, *for the Respondent-MCGM.*

Mr Surin Usgaonkar, *for Respondent Nos. 3, 4 & 5.*

Mr Bhavesh Parmar, *with Devmani Shukla, Rajesh Sahani, Reshma*
Nair, i/b Devmani Shukla, for Respondent Nos. 6 & 7.

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

DATED: 14th September 2023

PC:-

1. Rule. Rule made returnable forthwith.

2. Prayers (a) to (d) read thus:

“(a) that this Honourable Court be pleased to call for the records pertaining to the present case in respect of the redevelopment project of the Petitioners and after examining the same pass such orders and directions in respect thereof as this Honourable Court deems fit and proper.

(b) that this Honourable Court be pleased to issue and Writ of Mandamus or any other writ, order or directions in a

nature of mandamus directing and ordering the Respondent No. 1 and 2 to immediately and forthwith grant C.C. and I.O.D. and all other necessary permissions as per law and regulations in force, for the redevelopment of the said property i.e., Plot of Land bearing CTS No. 185 of Survey No. 11, Hissa No. 5, and Survey No. 11, Hissa No. 8 of Village Mulgaon at Andheri East, Taluka:: Andheri, District Mumbai Suburban, ad-measuring 6237.40 square meters, alongwith structures standing thereon, to the Petitioners.

(c) that the Petitioners be allowed and permitted to demolish the dilapidated structure, being the tenanted premises i.e. 5000 sq. ft. of Industrial Shed situated on Plot of Land bearing CTS No. 185 of Survey No. 11, Hissa No. 5, and Survey No. 11, Hissa No. 8 of Village Mulgaon at Andheri East, Taluka:: Andheri, District Mumbai Suburban, and/or any other structure standing thereon.

(d) that the Respondent No. 3 to 7 be ordered and directed to handover quite, vacant and peaceful possession of the said tenanted premises more particularly described in prayer clause (c) hereinabove for the purpose of redevelopment under Regulation 33(19) of the DCPR 2034, as amended from time to time.”

3. On instructions Mr Khandeparkar states that he is not pressing prayer clause (a), (c) and (d), but only prayer clause (b).

4. A very quick look at the array of parties will tell us that this Petition involves no great question of law. Respondent No. 3 is a partnership firm. It is admittedly a tenant of some portion of the property that the Petitioner purchased and the history of which is set out at the head of the Petition. The land in question is at village Mulgaon at Andheri East. It is about 6200 square metres in area.

Respondents Nos. 4, 5, 6 and 7 have disputes *inter se* regarding the partnership firm-Respondent No. 3. Those disputes were taken to arbitration. We are told there was an award. Then we were told that there are two awards. That makes very little difference. The development proposal by the Petitioners does not disavow or propose to dispose of or otherwise eradicate the tenancy of Respondent No. 3. It is to be reaccommodated on ownership basis with fungible FSI.

5. The reason the Petitioner is required to come to court is not a refusal by the MCGM but by its quite conspicuous silence after Respondent No. 6, one of the disputing partners represented by Mr Parmar, made a complaint to the MCGM.

6. At this stage, Mr Khandeparkar on instructions states that the Petitioner has the irrevocable consents of the requisite number of tenants as also of Respondent No. 3. Even if there is a dispute as to that consent of Respondent No. 3, that is an internal matter between the partners. It has nothing to do with this Writ Petitioner.

7. An internal dispute between partners of a partnership firm which is the tenant is no reason to withhold permission or consideration of a redevelopment proposal at the instance of the property owner. If this was the contemplation of law, very likely in the city of Mumbai no property could ever be developed. There will always be partnership firms in which partners do not agree. The rights of an owner are not constrained by any provision under the Partnership Act, 1932 because of a disagreement between the partners. It is pointless telling us that in some other proceedings

between the partners there are status quo orders or that in a landlord-tenant rent dispute there are allegations, counter allegations or even status quo orders. What the Petitioner as a property owner seeks and this is part of the property rights of the Petitioner, is to have a redevelopment proposal considered by the MCGM in accordance with planning law. It is impossible to see how the internal disputes of Respondents Nos. 3 to 7 can come in the way.

8. The MCGM itself has no objection to considering the Petitioner's proposal on merits and in accordance with law.

9. Mr. Khandeparkar states that a final proposal was submitted to the MCGM on 25th October 2021. It has already been pending for too long. We direct the MCGM through the Executive Engineer (Building Proposals) to consider this redevelopment proposal at the earliest possible and, in any event, by 31st October 2023.

10. The Petition is disposed of in these terms. We make it clear that we have not addressed the merits of any dispute between the partners of Respondent No. 3. Those matters will take their own course on merits.

11. All Affidavits to be filed in the Registry.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This order is modified as per Order dated 20th September 2023. The correction is shown in bold, italics and underline.