

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

WRIT PETITION NO. 3424 OF 2022

Prakash Tukaram Jadhav & Ors. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

***WITH
INTERIM APPLICATION NO. 1544 OF 2023
IN
WRIT PETITION NO. 3424 OF 2022***

Mehta Building Cooperative Housing
Society (Proposed) ... Applicant
Versus
Prakash Tukaram Jadhav & Ors. ... Respondents

***WITH
INTERIM APPLICATION (L) NO. 715 OF 2023
IN
WRIT PETITION NO. 3424 OF 2022***

Jagruti Cooperative Housing
Society (Proposed) ... Applicant
Versus
Prakash Tukaram Jadhav & Ors. ... Respondents

Mr. Shishir Joshi a/w Mr. Chetan Mhatre i/by Priti Joshi for the
Petitioner.

Mr. Amit Shastri, AGP for the Respondent No.1.

Mr. A. Y. Sakahare, Senior Advocate a/w Ms. Vandana Mahadik for
the Respondent-MCGM.

Dr. Milind Sathe, Senior Advocate a/w Mr. Bhavik Manek, Mr.
Sharad Wakchoure for the Respondent Nos. 6 and 7.

Ms. Sarita Yadav for the Respondent No.8.

Mr. Mayur Khandeparkar i/by Mr. Amey Deshpande, Ms. Vandana
Bait for the Respondent No.9.

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

DATE : 18 APRIL 2023

P.C. :

We have heard learned counsel for the parties.

2. The issue in the present proceedings concerns the redevelopment of two amalgamated plots. The petitioners are concerned with the plot no.C.S. No.1/2000 in respect of which the petitioners have formed respondent no.8-Mehta Building Cooperative Housing Society (proposed) and respondent no.9-Jagruti Cooperative Housing Society (proposed) in respect of the other plot of land. Respondent nos. 6 and 7 are the developers, who are appointed to undertake redevelopment in respect of the amalgamated plots and in whose favour an LOI has been issued. The case of the petitioners is that the petitioners are completely kept away from the process of redevelopment, although they have a say not only concerning the redevelopment of the plot as occupied by the petitioners and/or by the members of their proposed society, but also in any decision being taken in regard to such redevelopment. The concern of the petitioners is to the effect that the LOI has been being issued in favour of the developers without any consultation and/or taking into consideration the petitioners'

interest. It is in these circumstances, the present petition has been filed praying for following reliefs:

“(a) That this Hon'ble Court be pleased to grant leave & treat present Petition in representation capacity under the provisions of Order I, Rule 8 of the Code of Civil Procedure, 1908;

(b) That this Hon'ble Court be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ or Direction of this Hon'ble Court to call for the records and proceedings pertaining to Letter of Intent dated 30.03.2022 (Exh-SS) and quash and set aside the same as illegal, arbitrary, malafide, perverse, erratic, irrational, erroneous, unfair and discriminatory and issued in Colourable Exercise of Powers by BMC not in accordance with law;

(c) That this Hon'ble Court be pleased to issue an appropriate Writ or an Order directing BMC to take give Personal Hearing and take Fresh Consents of Occupants of Rasool Jiwa Compound and Mehta Building, C.S. No.1/2000 and C.S. No.2002, Keshavrao Khadye Marg, Mumbai-400 011, for the purpose of redevelopment of property;

(d) In the alternative to prayer (c) above, this Hon'ble Court be pleased to issue an appropriate Writ or an Order or a Direction to BMC to issue Tenders and invite Bids for appointment of new Developer after ascertaining the Concurrence and Wishes of the Occupants of the Rasool Jiwa Compound after explaining the Scheme of Redevelopment, Occupants entitlement and complete transparency in redevelopment.

(e) Pending the admission, hearing and final disposal of the Wit Petition, this Hon'ble Court be pleased to stay the effect, operation and implementation of the Letter of Intent dated 30.03.2022 (Exh. SS) for redevelopment of Rasool Jiwa Compound and Mehta Building at C.S No. 1/2000 and C.S. No. 2002, Keshavrao Khadye Marg, Mumbai 400 011;

(f) Pending the admission, hearing and final disposal of this

Writ Petition, this Hon'ble Court be pleased to direct the BMC to act as per their letters dated 19.9.2018 (Exh.M) and Letter dated 24.10.2018 (Exh.T), Letter dated 19.09.2019 (Exh.MM), Guidelines dated 10.10.2016 (Exh.F) and Guidelines dated 17.11.2020 (Exh.OO) and convene a meeting of Occupants of Rasool Jiwa Compound and Mehta Building, C.S. No. 1/2000 and C.S. No.2002, Keshavrao Khadye Marg, Sat Rasta, Mumbai-400 011 under supervision of any Officer appointed by this Hon'ble Court, to ascertain the Consent and Wishes of Occupants of Property for redevelopment;

(g) Interim and ad-interim reliefs in terms of prayer clause (e) and (f) above be granted;

(h) Any such further and other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case."

3. The petitioners have contended that several representations are made to the Municipal Corporation, Greater Mumbai (for short 'MCGM') raising their grievances and contentions. Some of the representations are annexed to the petition, which have not been addressed by the MCGM.

4. The contentions as urged on behalf of the petitioners are opposed on behalf of the respondent nos. 6 and 7-developers and also respondent no.9, including on the locus of the petition.

5. Be that as it may, in our opinion, petitioners have certain grievances, such grievances are required to be looked into by the MCGM. This also appears to be the case of their proposed society (respondent no.8). The petitioners contend that they form an

integral part of the land, subject matter of redevelopment, hence, their interest would be required to be taken into consideration in regard to the redevelopment in question, in a manner as required by law. This would ofcourse be subject to the objections of the respondent nos. 6 and 7-developers and respondent no.9 in regard to the genuineness and/or bonafides of the claim as made by the petitioners.

6. In the aforesaid circumstances, we are of the opinion that the petitioners/respondent no.8 be permitted to make a fresh representation to the Joint Municipal Commissioner (Improvement) which be made within three weeks from today. The Joint Municipal Commissioner, after hearing the developers, as also respondent no.9, and any other stake holders, shall pass appropriate orders in accordance with law within a period of six weeks after receipt of the said representation of the petitioners.

7. All contentions of the parties in that regard are expressly kept open.

8. Ordered accordingly.

9. In the above circumstances, we have not examined the rival contentions. We leave these contentions to be heard and decided by the designated Officer of the Municipal Corporation.

10. Petition is disposed of in the above terms. No costs.
11. In view of the disposal of the petition, interim application/s, if any, stand disposed of.
12. Parties to act on an authenticated copy of the order.

R. N. LADDHA, J.

G. S. KULKARNI, J.

Note: This order is corrected as per speaking to the minutes order dated 18 April 2023.

BIPIN
DHARMENDER
PRITHIANI

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