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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2907 OF 2018

Mohan Kanahiyalal Jain & Ors ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Vivek Sharma, i/b Vivek Kantawala & Co, for the Petitioner.
Ms Rupali Adhate, for the Respondent- MCGM.
Mr BL Shingane, A E (BF) P/South Ward – present.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 7th December 2023

PC:-

1. This is a companion Writ Petition to Writ Petition No 2015 of 2018. The Petitioners here have no locus at all. They are third party purchasers from the developer Siroya FM Construction.

2. These rights of the third party flat purchasers as against the developer and as against the society are questions of law that are no longer *res integra*. They were decided by a learned Single Judge of this court many years ago in *Vaidehi Aakash Housing Pvt Ltd v New D N Nagar Co-op Housing Society Union Ltd & Ors*¹ and in *Goregaon*

1 2014 SCC OnLine Bom 5068 : (2015) 3 AIR Bom R 270.

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*Pearl CHSL v Dr Seema Mahadev Paryekar & Ors.*² Our Division Bench in *Deepak Prabhakar Thakoor & Ors v MHADA & Ors*³ has reaffirmed both decisions.

3. Briefly stated, the law is that third party purchasers have no privity and no rights as against the society or the assets of the society. Their remedies are against the developer. This attempt to argue and reargue the same point again and again almost in the hope that if Counsel can succeed in exhausting the judge a favourable order will follow cannot be allowed to succeed. These arguments have been repeated not only *ad infinitum* but now *ad nauseum*. Enough is enough.

4. These Petitioners are at liberty to pursue their remedies against the 3rd Respondent developer with whom each of the Petitioners has a separate and independent flat purchase agreement. Undoubtedly questions of registration and stamp duty will arise in any such civil proceeding as also possibly questions of limitation. There may or may not be arbitration clauses. But what is not permissible is to consider in the guise of a Writ Petition the utterly fantastic reliefs that are being sought by these Petitioners, third party purchasers one and all, in prayer clauses (a) to (d) at pages 32 to 34 which read thus:

“(a) that this Hon’ble Court be pleased to appoint any person/authority or entity who shall inspect and evaluate the property constructed with an incomplete building on plot of land bearing No. 30, 31 of Shrinagar Estate admeasuring

2 2019 SCC OnLine Bom 3274.

3 2023 SCC OnLine Bom 2234.

676 sq. Yards and 497 sq. Yards being Survey No.14 Hissa No.1 situate at Mauje Pahadi, Shri Nagar Estate, M.G. Road, Goregaon (W), Mumbai-400 062 in its entirety and quantify the amount to be utilised for the completion of the building till the stage of procurement of the Occupation Certificate (OC) and payments made to the Mumbai Municipal Corporation and such other Government Authorities for regularising the building and submit such report before this Hon'ble Court.

(b) That this Hon'ble Court be pleased to pass an order directing the Respondent No.3 and its directors to file a detail Affidavit of all the properties owned by them including encumbered and un encumbered quantifying and/or disclosing their list of assets and various accounts with their balances and balance sheets of the Firms, IT returns filed by the Respondent No. 3 Developer as well as personal IT Returns of the Directors of Respondent No. 3 for the last five years so as to enable a conclusion about the net worth of the Respondent No.3 and its directors.

(c) That this Hon'ble Court be pleased to direct any Architect appointed by this Hon'ble Court to foresee the completion of the building after submission of the Report enabling the works to be complied with for completion and the cost to be paid to such authorities including the Mumbai Municipal Corporation and the costs of construction and thereupon utilise the personal funds of the directors of the Respondent No.3 to ensure the completion of the building and its regularisation thereby completing the project in its entirety till procurement of the Occupation Certificate.

(d) That the Respondent No.1 Mumbai Municipal Corporation and/or their respective agents and/or employees and/or servants and/or representatives and/or anyone acting for and/or their behalf and/or by and/or through them be restrained by an order of injunction from

carrying out any work of demolition in the already constructed Ground plus 15 storey building being Deshabhimani Building situated at Plot of land bearing No. 30 and 31 of Shrinagar Estate admeasuring 676 sq. yards and 497 sq. Yards bearing Survey No. 14, Hissa No.1 situated at Mauje Pahadi, Shree Nagar Estate, M.G. Road, Goregaon (West), Mumbai – 400 062.”

5. Not a single one of these prayers even attempts to invoke the writ jurisdiction of this court against a public authority.

6. We completely fail to see what public law right is being claimed by these Petitioners against the Municipal Corporation, the only public authority involved. The developer is not an instrumentality of the State and no writ will issue to it. No right is demonstrated in the Petition that vests in the Petitioners against the MCGM. The only relief that is sought is the consequential direction to the MCGM not to demolish that which is alleged to be demonstrably illegal.

7. The Petition is rejected, preserving liberty in regard to appropriate civil remedies in a court of competent jurisdiction.

(Kamal Khata, J)

(G. S. Patel, J)