

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 605 OF 2023**

Shree Ram Builders ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondent

**WITH
WRIT PETITION (L) NO. 4279 OF 2023**

Shree Ram Builders ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

**WITH
WRIT PETITION NO. 874 OF 2023**

(Not on board)

Jyotsana Pravinchandra Shah ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Girish Godbole, Senior Advocate, with Susmit Phatale, Sagar Kasar, Chaitali Bhogle & Rachana H, for the Petitioner in WP/605/2023 & WPL/4279/2023.

Ms Kalpana Trivedi, for the Petitioner in WP/874/2023 and for Respondents Nos. 6 and 7 in other Petitions.

Mr Kunal Waghmare, for Respondents Nos. 1 to 5-MCGM.

Ms Deepa Panicker, for Respondent No. 8 in WP/605/2023.

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

DATED: 26th September 2023

PC:-

**WRIT PETITION NO. 605 OF 2023
(*Shree Ram Builders & Anr v MCGM & Ors*)**

1. The Writ Petition is by a owner-developer and its partner. Prayer clauses (b) and (c) of the Petition at pages 18 and 19 read as follows:

“(b) This Hon’ble Court be pleased to issue a Writ of Mandamus and/or any appropriate Writ or directions to the Respondent nos. 1 to 5 to issue all the necessary sanctions/ permissions/ approvals/ NOCs in favour of the Petitioners in respect of the Re-development of the said property WITHOUT insisting upon the production of Registered Permanent Alternate Accommodate Agreements along with Respondent nos. 6 to 8 as mentioned in the condition no. 20 of the IOD dated 17.05.2021 (Exhibit-E hereto);

(c) This Hon’ble Court be pleased to issue a Writ of Mandamus and/or any appropriate Writ or directions to direct Respondent nos. 1 to 5 to expeditiously take steps for issuing all necessary Sanctions/ NOCs/ Permissions to the Petitioners in respect of the re-development of the said property.”

2. The principal contesting Respondents are Respondent No. 6 Jyotsna Shah, Respondent No. 7, Vasant Savla, and Respondent No. 8, Chidambaram Sethu. Respondent No. 7 appears in person. Respondents Nos. 6 and 8 are separately represented.

3. Mr Godbole for the Petitioners says that all three of these Respondents were non-cooperating tenants. Other tenants cooperated and Permanent Alternative Accommodation Agreements (“**PAAA**”) have been signed with them.

4. Mr Godbole today hands up a chart relating to these three Petitioners (on the reverse side is a chart relating to Writ Petition No. 4279 of 2023). The chart is taken on record and marked “**X**” for identification with today’s date.

5. So far as Respondent No. 8 is concerned, he was a tenant of Room No. 3 in old Building No. 1. He has now been allotted unit 1302 in ‘B’ wing. The old area was 375.34 sq ft. In the new building, Respondent No. 8 is being offered 395.03 sq ft. This is being offered on a tenancy basis.

6. Respondent No. 7 has been allotted unit 901 in ‘B’ wing in the new building. Respondent No. 7 was a tenant of Room No. 11 in the old building. The old area as per the Municipal Corporation of Greater Mumbai (“**MCGM**”) records was 430.45 sq ft. He is being offered 448.96 sq ft. This is also on a tenancy basis.

7. Mr Godbole clarifies that others who cooperated entered into commercial transactions with the developer by which they were given additional area and were also allowed to purchase further area. Their new units are on an ownership basis.

8. Neither of these persons is being offered transit rent. It is not possible for us to accept an argument from the Respondents who have filed no proceedings of their own that we should pass some sort of money decree in their favour for transit rent, nor can we compel the Petitioners in exercise of our limited writ jurisdiction to change the terms on which the new premises are offered, i.e., on ownership basis.

9. Respondents Nos. 7 and 8 are present in Court. Respondent No. 7 states, and Respondent No. 8 instructs his Advocate to state, that they will accept the allotments that are now being offered on tenancy basis.

10. Respondents Nos. 7 and 8 have, however, agreed to sign the PAAA. We have taken this step because it appears to us to be in the interests of these tenants that they should get as soon as possible an allotment of their premises.

11. Respondent No. 6, Jyotsna Shah has filed a separate Writ Petition No. 874 of 2023. That is dealt with separately below. In view of that order, no order is required in this Writ Petition in respect of Respondent No.6.

12. Accordingly, Writ Petition No. 605 of 2023 is disposed of accepting the statement of Mr Godbole in regard to Respondents Nos. 7 and 8 and directing the MCGM not to insist upon the execution of a PAAA with Respondent No. 6. This will suffice for the purposes of prayer clauses (b) and (c) set out above.

WRIT PETITION (ST) NO. 4279 of 2023***(Shree Ram Builders v MCGM & Ors)***

13. This stands on a slightly different footing. The original tenant was one KJ Naik, Respondent No. 6. She was a tenant of Room No. 2 and has been allotted unit 904 in 'B' wing. The old area was 268.35 sq ft and the area in the new building is 321.84 sq ft. She had consented to redevelopment. Her daughter lived with her. It seems that Respondent No. 6 and her daughter are believed to have passed away. In any case, their whereabouts are unknown and, therefore, Writ Petition (St) No. 4279 of 2023 will have to be kept pending with certain further directions. The Petitioners will issue a public notice that Unit No. 904 in 'B' wing has been kept aside or is being kept aside for Respondent No. 6 or her heirs and that they are at liberty to move the Court for appropriate orders. An affidavit proving publication is required. The notice is to be issued in two newspapers, one in English and one in Marathi. The newspapers must have circulation in the locality of the construction site.

14. The Petition will be kept pending and it is open to the Petitioners to apply for appropriate orders and, if necessary, to file an interim application for that purpose, but no earlier than one year after the issuance of the public notice.

15. In the meantime, Unit No. B-904 is not to be allotted to any other person.

WRIT PETITION NO. 874 OF 2023

(Jyotsana Pravinchandra Shah v State of Maharashtra & Ors)

16. Not on board. Mentioned. Taken on board.

17. The Petitioner is Respondent No. 6 to the Writ Petition No 605 of 2023 and is therefore referred to as such. This Petition by Respondent No. 6 was filed in July 2022. Prayer clauses (b) and (c) at page 28 of that Petition read as follows:

“(b) Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding the Respondent Authorities to forthwith (take steps for implementation of Regulation 33(7) (A) of DCPR 2034;

(c) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding the Respondents Authorities to forthwith take steps for transit accommodation of the Petitioners/tenants under Regulation 33(7) (A) of DCPR 2034.”

18. Those are the only two final prayers. They are misconceived. It is not for a tenant to dictate the nature of the redevelopment or whether it should be under a particular DCPR Regulation or some other regulation. The issue is no longer *res integra*. It is fully covered by a decision of a Division Bench of this Court in *GM Heights LLP v Municipal Corporation of Greater Mumbai & Ors.*¹ Paragraphs 2, 10 18, 19 and 20 of this order read thus:

¹ 2023:BHC-OS:2535-DB : Writ Petition No. 5302 of 2022, decided on 29th March 2023.

2. A short question which arises for consideration in the present proceedings is, whether tenants (in the present case one tenant) can dictate the nature of the redevelopment to be undertaken by the landlord, by insisting that the redevelopment of the building necessarily should be, as the building originally stood, prior to its demolition. Illustratively residential premises should be redeveloped only as residential and not as commercial or vice-versa.

10. Mr. Jain, learned counsel for the respondent no.3 in opposing the petition has peculiar submissions. On a query made to Mr. Jain, as to whether a single tenant, i.e., only respondent no.3 can dictate the course of redevelopment to be undertaken by the petitioner. **Mr. Jain is not in a position to show any legal right, which could permit a single tenant to dictate the course of redevelopment to be undertaken by the landlord. Mr. Jain is also not in a position to draw the Court's attention to any embargo on the owner of the land, to undertake redevelopment, different from the nature of the existing building which has stood demolished.** Mr. Jain is also not in a position to make good that the proposal of the petitioner as submitted to the Municipal Corporation under Regulation 33(19) of the DCPR 2034 is in any manner illegal. The insistence of Mr. Jain is that the redevelopment ought to be as per Regulation 33(7)(A) of the DCPR 2034. This, on the ground that in 2021, a draft permanent alternate accommodation agreement was forwarded to the respondent no.3 by the petitioner under which clause 10.8 provided that a redevelopment proposal under Regulation 33(7)(A) shall be submitted by the petitioner. Mr. Jain submits that petitioner cannot foist commercial premises on respondent no.3, when what was in occupation of the respondent no.3 in the demolished building were residential premises, and for such reasons municipal corporation

would be right in not issuing commencement certificate in favour of the petitioner, and/or necessarily in the building which is proposed to be constructed, respondent no.3 ought to be provided residential accommodation.

18. **It may be observed that respondent no.3 in his capacity as a tenant has limited rights. Respondent No.3 within the ambit of such rights cannot dictate the petitioner-owner, as to the nature of redevelopment.** If such contention, as urged on behalf of the respondent no.3, is accepted, it would amount to recognizing rights which are certainly not conferred by law on the tenants. Recognizing such rights would in fact take away and/or obliterate the legal rights of the owners of property to undertake redevelopment in a manner as may be permissible in law, including under the DCPR 2034.

19. **Thus, tenants cannot take a position to foist, dominate and/or dictate to the owner the nature and the course of redevelopment the owner desires to have. The rights of the owners of the property to undertake redevelopment of the manner and type they intend, cannot be taken away by the tenants, minority or majority. Tenancy rights cannot be stretched to such an extent that the course of redevelopment can be taken over by the tenants, so as to take away the basic corporeal rights of the owner of the property, to undertake redevelopment of the owners choice. The only rights the tenants have, would be to be provided an alternate accommodation of an equivalent area occupied by them before the building was demolished.**

20. Before us, was a similar situation in the case of *Raj M. Ahuja* (supra), wherein an industrial building was demolished and the owner had taken recourse to residential development. Thus, there are situation and situations, as to why a particular type of redevelopment is intended by the

owner. Such inherent rights of the owners to have a redevelopment of their choice cannot be questioned by the occupants/tenants, when the owner is ready and willing to protect the rights of the tenants, by providing alternate accommodation in the redeveloped premises. We have not been pointed out any legal rights and rights so overwhelming of the tenants, which would override the legal rights of the owners, to undertake redevelopment as per the choice of the owners of the land, as in the present case.”

(Emphasis added)

19. There is no point in Ms Trivedi dismissing this authority on the basis that the case dealt with DCPR 33(19). The decision is on the general principle whether tenants can dictate the nature of the re-development. The Division Bench held that they cannot. That decision is binding on us, and, in any case, we agree fully. The prayers in the present Petition seek to do precisely that which the Division Bench said could not be done by any tenant, viz., to dictate to the owner the type of re-development — whether under DCPR 33(1) or DCPR 33(7)(A).

20. Respondent No. 6 has also filed a suit in which there is a claim for arrears of transit rent. She is at liberty pursue that suit. She was an occupant or tenant of Room No. 13 in the old building. She has been offered unit 1004 in ‘B’ wing on a tenancy basis. The area according to Mr Godbole, as per the MCGM records in the old building was 323.89 sq ft. What is being provided in the new building is 373.51 sq ft.

21. Respondent No. 6 disputes the correctness of these area figures. According to her, she is entitled to an area of 450.83 sq ft.

22. If there are factual disputes, we cannot examine these in our writ jurisdiction. Mr Godbole on instructions from the 2nd Petitioner who is present in Court states that so far as Respondent No. 6 is concerned, whatever is the area as certified by the MCGM will be provided by Respondent No. 6. It is for Respondent No. 6 to establish on the basis of official MCGM records the area to which she claims she is entitled. We do not expect Respondent No. 6, therefore, to sign a PAAA at this stage. The MCGM will not insist on the developer producing a signed and registered PAAA with Respondent No 6.

23. On the question of the 6th Respondent's entitlement to area, the MCGM will undoubtedly hear both sides and consider all documents produced.

24. We see no purpose in keeping this Petition pending. Final prayer clauses (b) and (c) cannot be granted. The Petition is rejected, with the foregoing clarifications.

(Kamal Khata, J)

(G. S. Patel, J)