

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.783 OF 2023**

Amit Khimji Maru & Ors.

...Petitioners.

Versus

Municipal Corporation Gr.Mumbai & Ors.

...Respondents.

.....

Mr Ashish Mehta a/w Ms Tejashree Choudhari i/b Ethos Legal Alliance for the petitioner.

Mr. Kunal Waghmare, Advocate for MCGM.

Mr. Manish Upadhye, AGP for State.

Mr. Karl Tamboly a/w Mr. Uttam Shukla i/b Jeet Gandhi for Respondent no.6.

Mr. Simil Purohit a/w Nitesh R., a/w Ms Anushree Udani, Mr. Mustaqueem Bagaria i/b Wadia Ghandy & Co. for Respondent No.7.

.....

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

DATE : 27 MARCH, 2023.

P.C. :-

The petitioners are four in number, out of 344 total members of Respondent No.6/the Mahapalika Laghuvetan Karmachari CHS Limited.

2. The Petitioners have approached this Court praying for the following reliefs,

A. For a writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, Order, Direction under article 226 of the Constitution of India, against Respondents:

i) Directing the Respondent Nos. 1 and 2 to conduct an inquiry and submit a Report before this Hon'ble Court in respect of the violation of the terms and conditions of the Mortgage Deed after hearing the grievance/complaint/issues raised by the Petitioners and the Respondent No.6 Society in respect thereof;

ii) Calling for papers and proceedings and documents pertaining to the Mortgage Deed dated 12th June 1984 executed by and between the Respondent Nos 1 and 6 and directing the Respondent No.1 to expeditiously inquire into the matter and submit a report before this Hon'ble Court to enable the Respondent No.6 to discharge the Mortgage Deed dated 12th June, 1984;

iii) Direct the Respondent No.4 to take necessary steps and to conduct a preliminary inquiry in respect of the complaints/grievance raised by the Petitioner in its letter dated 14th July 2022;

iv) Direct the Respondent nos. 3, 5 and 6 to expeditiously hold the elections of the Managing Committee of the Respondent Nos.6 Society to constitute a New Managing

Committee of the Respondent Nos.6 Society.

v) Direct the Respondent No.3 to submit a detailed report as to the grievance and complaints raised by the Petitioners against the actions taken by the Managing Committee of the Respondent Nos.6 Society in respect of the Redevelopment of the Respondent Nos.6 Society;

B. That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to pass the following orders and injunctions against the Respondents.

vi) An administrator be appointed on the Respondent No.6 Society to run the day to day affairs of the Respondent No.6 Society and to hold the elections of the Managing Committee of the Respondent Nos.6 Society.

vii) Until the election of the New Managing Committee of the Respondent Nos.6 Society, the present Managing Committee of the Respondent Nos.6 Society be restrained from taking any step or decision in respect of the affairs of the Respondent Nos.6 Society.

viii) The Respondent Nos 6 and 7 ought not to be granted any permission for redevelopment of the Respondent Nos 6 Society unless the permission of Respondent No.1 is obtained by them.

ix) Until the permission of Respondent No.1 to proceed with the Redevelopment of the Respondent No.6 Society is obtained any permission granted to Respondent Nos 6 and 7

be stayed and the Respondent Nos 6 and 7 be restrained from taking further steps towards the Redevelopment of land the Respondent No.6 Society which is in mortgage with respondent no.1.

x. Directing the Respondents to provide copies of the entire papers and proceedings pertaining the Affairs of the Managing Committee and decisions taken by it and/or take inspection of all the relevant documents pertaining to Affairs of the Managing Committee and decisions taken by it.

C. Interim and ad-interim reliefs in terms of Prayers (B) hereinabove;

D. Such other and further reliefs as this Hon'ble Court may deem fit and proper.

3. As seen from the averments as made in the petition, the petitioners have a grievance in regard to the decision taken by the Managing Committee, *inter-se* touching the management of the society, which would certainly be a private dispute, which cannot be a subject matter of adjudication before this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and for which petitioners have a remedy under Section 91 of the Maharashtra Cooperative Societies Act by approaching the

Cooperative Court. We are, accordingly, not inclined to examine such private dispute between the petitioners and respondent/Society.

4. Insofar as the grievance of the petitioners, in regard to the mortgage of the land, as entered between the society and the MCGM is concerned, although on the earlier occasion it was orally informed that there were no dues payable, under the mortgage in question, we had directed the MCGM as also the society to place on record their respective affidavits, on the correct position in regard to any dues payable.

5. In pursuance of the said order passed by us, on behalf of the MCGM, Mr. Rajendra Dattapuri Gosavi, Dy.Chief Accountant (Housing Loan), has filed an affidavit dated 23.3.2023, *inter alia* stating that on examination of the files and record in regard to loan, all amounts along with the interest and all penalties and charges have been paid by the society and there are no outstanding amounts payable by the society. Paragraphs No.12, 13, 14 and 15 of the aforesaid affidavit read as under:

12. I say that after scrutinizing the said application of Respondent No.6 Society, it was found that there were some violations of terms and conditions of Mortgage Deed and accordingly this office issued letter dated 06.02.2023 demanding penalties and charges of Rs.2,27,80,592/- from Respondent No.6 Society as per the circular u/no.CA/FHL/10 dated 09.07.2018. Hereto marked and annexed as **Exhibit 'D' (Colly)** is the copy of circular CA/FHL/10 dated 09.07.2018, copy of letter dated 06.02.2023 along with challan issued to Respondent No.6 demanding penalties and charges.

13. I say that the said demand amount was paid by the Respondent No.6 Society in Municipal Treasury under SAP Document No.1004535208 dated 10.02.2023. Hereto marked and annexed as **Exhibit 'E'** is the copy of receipt of Rs.2,27,80,592/- paid by Respondent No.6.

14. I say that as per Rule No.13.1 of the aforesaid circular, all files and papers were sent to Municipal Chief Audit Department for audit. After auditing the files, Municipal Chief Audit Department had put a spot audit note for amount of Rs.2,32,087/- and this amount of Rs.2,32,087/- was paid by Respondent No.6 Society in Municipal Treasury under SAP document no.1004566926 dated 16.3.2023. Hereto marked and annexed as **Exhibit 'F'** is the copy of note dated 15.3.2023 alongwith receipt of Rs.2,32,087/- paid by Respondent No.6.

15. I therefore, submit that the all the loan amount along with interest and all penalties and charges as per circular has been paid by Respondent No.6 and there is no outstanding amount remaining. Therefore, the grievance raised by the petitioner may not be entertained by this Hon'ble Court in the present writ petition and the anxiety of the Petitioner has been taken care of and therefore the present petition may be disposed off.

6. Similarly, on behalf of Respondent No.6 an affidavit of Mr. Sunit Sawant has been placed on record. Para 6 of the said affidavit furnishes the details of the amounts paid by the society to the MCGM. As also, copy of receipt of payment of the amounts, is placed on record. Paragraph no.6 of the said affidavit reads thus :

*6. I say that the Respondent No.6 has duly paid the said Amounts to the Respondent No.1. Copy of the receipt evidencing the payment of the said Amounts are annexed hereto and marked as **Exhibit "D"** and **Exhibit "E"** respectively.*

7. Having considered the affidavits filed on behalf of the Municipal Corporation, as also, on behalf of the Society, the Petitioners' apprehension/grievance in regard to dues payable in

relation to the mortgage in question, stands fully satisfied. We are, thus, not inclined to entertain this petition. The petition is accordingly, dismissed, however, subject to above observations. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]