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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5302 OF 2022

G M Heights LLP

... Petitioner

Versus

Municipal Corporation of Greater
Mumbai & Ors.

... Respondents

Mr. G. S. Godbole, Senior Advocate i/by Ms. Kavita Shah for the
Petitioner.

Mr. Darshit K. Jain i/by Ms. Divya Jain and Mr. Dileep Satale for the
Respondent No.3.

Mr. Kunal Waghmare, for the Respondent/MCGM.

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

DATE : 29th MARCH, 2023

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith. Respondents waive
service. By consent, heard finally.

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.

3. The petitioner, which is a Limited Liability Partnership firm, is the owner of land bearing Final Plot No. 128B of TPS Bandra BIII in F Ward of CTS Bandra, admeasuring 714.90 square meters. Earlier, there was a building standing on said plot of land, which had 21 tenants. Certain part of the existing building had commercial tenements and partly residential tenements. The building had become dilapidated. A notice was issued by the respondent-Municipal Corporation of Greater Mumbai (for short '**Municipal Corporation**') to the owners/occupants under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short '**MMC Act**'). The building ultimately was demolished in August 2021.

4. The petitioner, in these circumstances, proposed to undertake redevelopment so as to construct a commercial building, which according to the petitioner was permissible as per rules. The petitioner intends to undertake such redevelopment under the provisions of Regulation 33(19) of the Development Control and Promotion Regulation for Greater Mumbai, 2034 (for short '**DCPR 2034**').

5. It is not in dispute that the petitioner had accordingly submitted a proposal to the Municipal Corporation and accepting such proposal, an Intimation of Disapproval (for short '**IOD**') dated 11 November 2021 came to be issued in favour of the petitioner. It is also not in dispute that except for respondent no.3, the other 20 tenants have no objection for the redevelopment being undertaken by the petitioner as per the proposal submitted by the petitioner to the respondent-Municipal Corporation. It is only respondent no.3 who is now

objecting to the redevelopment as proposed by the petitioner, for which an IOD has already been issued as noted above. The next step for the petitioner is to obtain a commencement certificate, however, as respondent no.3 is objecting and is refusing to enter into a Permanent Alternate Accommodation Agreement (for short 'PAAA'), and/or not issuing an NOC to the petitioner, the Municipal Corporation considering condition nos. 7 and 8 of the IOD has refused to grant a commencement certificate to the petitioner. Conditions nos. 7 and 8 of the IOD are required to be noted, which read thus :

“7. That the Registered Agreement with the existing tenant along with the list will not be submitted before C.C.

8. That the consent letter from the existing tenants for the proposed additions/alternations in their tenement will not submitted before C.C. That the consent letter from the existing tenants for the proposed additions/alterations in their tenement will not be submitted before C.C.”

6. In the above circumstances, the petitioner has approached this Court primarily on the ground that respondent no.3 who is only one tenant out of the majority of the 21 tenants, cannot obstruct the redevelopment in such condition as inserted in the IOD by the Municipal Corporation is arbitrary. The petitioner, hence, has prayed for following reliefs:

“(a) That this Hon'ble Court be pleased to call for the records and proceedings pertaining to the present case in respect of the development project of the Petitioner and after examining the legality, validity and propriety thereof, the said impugned Order/letter dated 3.11.2022 bearing No. Dy.Ch.E/BP/6989/ 7288/ WS-I passed/issued by the Respondent No.2 to the Petitioner annexed as Exhibit T hereto, be quashed and set aside;

(a-1) That this Hon'ble Court be pleased to declare that condition

1.15 of the Guidelines for declaring private and Municipal buildings as C-1 category (Dangerous, Unsafe) of the Municipal Corporation of Greater Mumbai is unconstitutional and ultra vires, the provisions of Sections 22, 31 and 45 of the M.R. & T.P. Act, 1966 and be pleased to issue appropriate writ to strike down the same;

(a-2) Pending the hearing and final disposal of the present Writ Petition, the effect, operation and implementation of the impugned Clause 1.15 of the Guidelines issued by the BMC in respect of reconstruction of dilapidated buildings demolished by the Corporation, be stayed in respect of the project of the Petitioner;

(a-3) Pending the hearing and final disposal of the present Writ Petition, the Respondents BMC and its officers may be restrained by an order of injunction from insisting on the compliance of the impugned Guideline No.1.15 of the Guidelines issued by the BMC in respect of reconstruction of dilapidated buildings demolished by the Corporation to stay in respect of the project of the Petitioner;

(b) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus thereby directing the Respondent Nos. 1 and 2 herein to grant to the Petitioner further CC in respect of redevelopment of the said Property i.e. Final Plot No. 128B of TPS Bandra III in F Ward of CTS Bandra admeasuring 714.90 sq. mtrs along with a building standing thereon known as Rami Raja Chawl situate at S.V. Road, Khar (West), Mumbai - 400 052, without insisting or obtaining the consent of the Respondent No.3 and execution of a permanent alternate accommodation Agreement (PAAA) between the Petitioner and Respondent No.3, Compliance of Undertaking dated 16.12.2021 shall not be insisted.

(c) Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court please to stay and/or suspend the said impugned Order/letter dated 3.11.2022 bearing No. Dy.Ch.E/BP/6989/7288/WS-I being Exhibit-T hereto.

(d) Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court may be pleased to issue mandatory interim order, thereby directing the Respondent Nos.1 and 2 herein to grant to the Petitioner further CC in respect of redevelopment of the said Property i.e. Final Plot No. 128B of TPS Bandra III in F Ward of CTS Bandra admeasuring 714.90 sq. mtrs along with a building standing thereon known as Ramji Raja Chawl situate at S.V. Road, Khar (West), Mumbai - 400 052, without insisting or obtaining the consent of the Respondent No.3 and execution of a permanent alternate accommodation Agreement (PAAA) between the Petitioner and Respondent No.3, Compliance of Undertaking dated 16.12.2021 shall not be insisted.

(e) Interim and ad-interim in terms of prayers (c) and (d) above be

granted.

(f) For such further and other reliefs as this Hon'ble Court may consider fit and proper on the facts and in the circumstances of the case;

(g) For costs.”

7. Mr. Godbole, learned Senior Counsel for the petitioner has made extensive submissions. He would submit that at all relevant times the petitioner was ready and willing to offer alternate premises, as also permanent alternate premises on ownership basis to the respondent no.3, similarly as offered to the other tenants. However, respondent no.3 on totally untenable reasons is refusing to accept such offer as made to him and as accepted by the other tenants. Respondent no.3 is insisting that the petitioner ought not to undertake redevelopment as per Regulation 33(19) of the DCPR 2034 and ought to undertake redevelopment as per the Rules 33(7)(A), namely, a residential redevelopment. It is Mr Godbole's contention that such approach on the part of the respondent no.3 is untenable. It is submitted that respondent no.3 neither has any legal right, nor locus so as to dictate the course of redevelopment to be undertaken by the petitioner. It is his submission that proposal for redevelopment, as permissible in law, as put by the petitioner before the Municipal Corporation, was accepted by the Municipal Corporation by issuance of an IOD for permitting the petitioner to undertake commercial development as per the provisions of Regulations 33(19) of the DCPR 2034. It is his submission that the insistence of respondent no.3 that the redevelopment needs to take place as per Rule 33(7)(A) of the DCPR 2034 is an unwarranted assertion and in fact an obstacle being created by respondent no.3, prejudicial not only to the interest of the

petitioner, but also causing a serious prejudice to the remaining tenants, who are also dishoused and who have accepted the redevelopment being undertaken by the petitioner. Mr. Godbole would submit that even otherwise considering the settled principle of law, respondent no.3 is a minority tenant/occupant of the building, which has been demolished. It is his submission that being a minority tenant, respondent no.3 cannot oppose and/or withhold the entire redevelopment.

8. Insofar as the Municipal Corporation putting the petitioner to terms as incorporated in condition nos. 7 and 8 of the IOD, i.e.; to have consent of 100% of the tenants or agreements for an alternate accommodation, to be entered with all the tenants, Mr. Godbole would rely on the decision of this Court in *Raj M. Ahuja v/s. Jain M. Ahuja*¹. Mr. Godbole has submitted that this Court has held that incorporation of such a condition in the IOD is arbitrary, as it would amount to minority of the tenants/occupants by not consenting and stalling the entire redevelopment project. He submits that the insertion of such condition which was in pursuance to the guidelines as issued by the Municipal Corporation has been held and interpreted to mean that such guidelines do not mandate consent/agreement to be obtained from all 100% tenants/occupants. Thus, Mr. Godbole's contention is that the reliefs sought in the petition, ought to be granted to the petitioners, so that the redevelopment can be taken forward.

9. Mr. Waghmare, learned counsel for the respondent-Municipal

¹ Writ Petition No. 5130 of 2022 decided on 20 March 2023.

Corporation would fairly submit that the Municipal Corporation can no more insist on the compliance of the condition nos. 7 and 8 of the IOD, in view of the decision of this Court in ***Raj M. Ahuja*** (supra). He submits that Municipal Corporation is bound by the said decision of this Court.

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.

11. On the above conspectus, we have heard learned counsel for the parties. We have also perused the record.

12. At the outset, we need to observe that the primarily the relief as prayed by the petitioner is that the Municipal Corporation ought not to insist for compliance of condition nos. 7 and 8 of the IOD as in the facts of the present case, respondent no.3 is not entering into an agreement for an alternate accommodation with the petitioner, and thereby is stalling the entire redevelopment. In our opinion and as rightly contended by Mr. Godbole such issue is squarely covered by the decision of this Court in ***Raj M. Ahuja*** (supra) wherein this Court interpreting similar condition as contained in an IOD, subject matter of consideration in such case, had held that incorporation of such condition which was in pursuance of clause 1.15 of 2018-Guidelines issued by the Municipal Corporation, namely, the “*Guidelines for declaring private and Municipal buildings as C-1 Category (Dangerous, Unsafe)*” do not mandate consent to be obtained from all 100% tenants/occupants and that consent of 51% to 70% of the tenants/occupants of the building as may be applicable to the proposals made under the relevant Regulation of the DCPR 2034 shall amount to sufficient compliance, for processing of development/redevelopment proposal for a commencement certificate to be issued including in respect of buildings covered under Section 354 of the MMC Act. Mr. Godbole is also correct in his contention that

Regulation 33(19) in fact is different from the other regulations, which had fell for consideration before the Court in the said decision, where consent of 51% to 70% was incorporated in the DCPR 2034. The submission is that such a clause has not been incorporated in Regulation 33(19) of the DCPR 2034.

13. Be that as it may, in our opinion, the petitioner appears to have taken a reasonable stand. The petitioner has already offered to respondent no.3 a permanent alternate accommodation on ownership basis, in the commercial building to be constructed as offered to the other tenants who are 20 in number. Such offer is not being accepted by respondent no.3. In fact, the petitioner in making such offer has been recorded by a coordinate bench of this Court in an order dated 12 January 2023 passed in the present proceedings. The said order needs to be noted, which reads thus:

“ *Heard learned Senior Advocate for the Petitioner.*

2. *Learned Senior Advocate by fling an undertaking submits that without prejudice to the rights and contentions of the Petitioner and subject to the final outcome of the legal proceedings between the Petitioner and Respondent No. 3 in R.A.E. Suit No. 200526 of 2022 pending in the Small Causes Court at Bandra, the Petitioner undertakes to earmark and reserve two commercial premises on tenancy basis admeasuring not less than (i) 10.80 sq. mtrs i. e. 116.25 sq. ft. carpet area and (ii) 22.40 sq. mtrs i. e. 241.11 sq. ft. carpet area respectively on the 4th floor of the building to be constructed in lieu of the old building known as Ramji Raja Chawl at Final Plot No. 128B of TPS Bandra III in F Ward of CTS Bandra, S. V Road, Khar(West), Mumbai – 400 052 by amending plans before obtaining the Occupancy Certificate thereof. He submits that the undertaking may be accepted by this Court and against that interim relief may be granted to the Petitioner. Learned counsel for Respondent No. 3 submits that the offer so given on behalf of the Petitioner is not acceptable to Respondent No. 3 and that the Respondent No. 3 would insist on his right to have equivalent carpet area for the residential purpose, as reflected in the actual*

measurement taken by the Corporation, in the proposed building. The undertaking tendered to this Court is taken on record and marked as 'A' for the purpose of identification and this is only for the purpose of record and further consideration. There is an alternate offer given on behalf of the Petitioner and it is about readiness of the Petitioner to pay an amount of Rs. 81,33,336/-, which is the value of the area of 33.20 sq. meter as per the Ready Reckoner applicable to the area in question. Learned Senior Advocate for the Petitioner submits that if this amount is accepted by Respondent No. 3, it will put an end to the dispute between the Petitioner and Respondent No.3.

3. The third alternate offer given by the learned Senior Advocate is as per the undertaking tendered to this Court which is taken on record and marked as 'B'.

4. Learned Senior Advocate submits that the above three offers are without prejudice to the rights and contentions of the Petitioner, and if any of them is accepted by Respondent No. 3, it will put an end to the dispute between the Petitioner and Respondent No. 3.

5. We are of the view that the dispute between the Petitioner and Respondent No.3 has potential of being settled through compromise and therefore, we request both the parties to meet each other for exploring the possibility of out of Court settlement and come back to this Court with their respective suggestions, if any on or before the next date on which date this matter is likely to be taken for final hearing at the admission stage.6. Stand over to 31.01.2023 at 2.30 p.m.. Liberty is granted to the Corporation to file its affidavit-in-reply. Liberty is also granted to the Petitioner to file its re-joinder."

14. As observed in the aforesaid order, the partner of the petitioner, namely, Mr.Vipul Harkisandas Valia, has placed on record an affidavit of the offer as made to respondent no.3 which was without prejudice to the rights and contentions of the petitioner which is to the following effect:-

"subject to the final outcome of the legal proceedings pending between the Petitioner and Respondent No.3 in R.A.E Suit No. 200526 of 2022 pending in the Small Causes Court at Bandra, I on behalf of the Petitioner undertake to earmark and reserve two commercial premises on tenancy basis admeasuring not less than (I) 10. 80 sq mtrs ie 116.25 sq ft carpet area and (ii) 22.40 sq mrs i.e 241.11 sq ft carpet area respectively, on the 4 floor of the building to

be constructed in lieu of the old building known as Ramji Raja Chawl at Final Plot No. 128B of TPS Bandra III in F Ward of CTS Bandra, S.V. Road, Khar (West), Mumbai - 400 052, by amending the plans before obtaining the Occupation Certificate (OC) thereof.”

15. Also there is an alternate offer made by the petitioner which was taken on record on an affidavit, marked B, as referred in the said order passed by a co-ordinate Bench of this Court wherein carpet area as offered to the petitioner was as per actual measurement taken on the site at the time of demolition of the existing building.

16. Apart from the above offers, as a last alternative, petitioner has also offered to pay respondent no.3 monetary compensation at the Ready Reckoner Rate. A copy of such rates was also placed on record. Respondent no.3, however, is not satisfied with any of the offers as made to him by the petitioner.

17. In the above circumstances and after hearing the learned Counsel for the parties, we are of the firm opinion that the approach of respondent no.3 in the present case is most unreasonable and adamant to say the least. Respondent no.3 in fact by his obstinate conduct is stalling the entire redevelopment, which he certainly cannot do, considering the settled position in law as laid down in several decisions of this Court. (See: **Girish Mulchand Mehta & Anr. Vs. Mahesh S. Mehta & Anr.**, 2010(2) MhLJ 657; **Kamla Homes and Lifestyle Pvt. Ltd. Vs. Pushp Kamal Co-op. Hsg.Society Ltd. & Ors.**, 2019 SCC OnLine Bom 823, **Westin Sankalp Developers Vs. Ajay Sikandar Rana & Ors.**, 2021 SCC OnLine Bom 421; **Sarthak Developers Vs. Bank of India Amrut Tara Staff Co-op. Hsg. Society Ltd. & Ors.**, 2012 SCC OnLine Bom 525; **Choice Developers Vs. Pantnagar**

Pearl CHS Ltd. & Ors., 2022 SCC OnLine Bom 786.)

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 infact 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.

21. In any event, we may also observe that submissions as urged on behalf of respondent no.3 in opposing the petition, are made without any challenge being raised to the IOD or any further commencement certificate already issued in favour of the petitioner. Thus, the approach of respondent no.3 in opposing the petition without laying an independent challenge itself is totally untenable.

22. For the reasons, we reject in totality the contentions as urged on behalf of respondent no.3. At this stage, we may note that there is a dispute between the petitioner and respondent no.3 which is subject matter of proceedings of an eviction suit as filed by the petitioner before the Small Causes Court. Whatever rights are available to respondent no.3, he is free to agitate his rights in the said suit.

23. In the light of the above discussion, we allow the present petition by the following order :

ORDER

(a) We direct the Municipal Corporation to issue Commencement Certificate to the petitioner without insisting for compliance of condition nos. 7 and 8 of the

IOD for want of the petitioner executing an agreement for an alternate accommodation, as per the decision of this Court in ***Raj M. Ahuja*** (supra) with respondent no.3.

(b) We keep open all rights and contentions of respondent no.3 open in the proceedings of petitioner's suit pending before the Small Causes Court.

(c) We also accept the petitioner's offer as made to respondent no.3 to provide alternate accommodation in the redeveloped premises on tenancy basis and which shall be subject to the outcome in the proceedings of pending suit before the Small Causes Court at Mumbai.

(d) Petition is allowed in the aforesaid terms. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]