

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 465 OF 2024**

Swarganga CHSL ...Petitioner
Versus
Harshad Deshpande Resolution Professional & ...Respondents
Ors

Mr Dhruv Gandhi, *with Gargi Bhagwat, i/b M/s. Divekar Bhagwat & Co, for the Petitioner.*
Mr Shadab Jan, *i/b Joshua Borges, for Respondent No 1-RP.*
Mr Kunal Maskar, *for Respondents Nos 7 to 16, 22 to 26, 30 to 34 & 39 to 42.*

**CORAM G.S. Patel &
 M.M. Sathaye, JJ.**
DATED: 18th March 2024

PC:-

1. We do not believe that this Petition can or should be entertained at this stage. We make it clear that we are not refusing the Petitioner relief altogether in the sense that we are not suggesting let alone holding that the Petitioner society has no rights or remedies. The reason is that the Petitioner society was under redevelopment by AA Estates which claims to have rights in the property in question at Santacruz. The Maharashtra Housing and Area Development Authority (“MHADA”) was the original owner of the land and was said to have leased it for a period of 999 years.

ARUN
RAMCHANDRA
SANKPAL
Digitally signed
by ARUN
RAMCHANDRA
SANKPAL
Date:
2024.03.19
16:59:23
+0530

2. AA Estates was taken into CIRP under the Insolvency and Bankruptcy Code 2016. Those proceedings are yet pending. In the meantime, there were Consent Terms dated 5th October 2021 in a Civil Suit No 214 of 2019 filed in this Court. The suit itself is still pending. One of the provisions of the Consent Terms was that should AA Estates fail to redevelop the building according to the earlier Development Agreement, then the society could do so. However, there were some flats over which security was created. There were other flats that were mortgaged. The Consent Terms said that the society could sell the security and the mortgaged flats as well to finance the construction.

3. It is for this reason that the present Petition seeks the following reliefs in prayer clauses (a), (b) and (c):

“(a) Issue a writ of *mandamus* or a writ in the nature of *mandamus* or any other appropriate writ, order or direction compelling the Respondents Nos. 1/2 and the IBBI to exclude or cause to be excluded the Mortgaged, Security and MHADA Flats (enumerated in ***Exhibit ‘C’***) from the liquidation estate and/or Information Memorandum and/or list / pool of assets of AA Estates Private Limited, notwithstanding the IEs at ***Exhibit ‘N’***;

(b) Issue a writ of *mandamus* or a writ in the nature of *mandamus* or any other appropriate writ, order or direction declaring that Petitioner is entitled to proceed against and/or sell and/or transfer and/or exercise its contractual rights in respect of the Mortgaged, Security and MHADA Flats (enumerated in ***Exhibit ‘C’***) in accordance with the Further Cts dated 1st October 2021 (annexed as ***Exhibit ‘K’***) and the law for the time being in force, and declaring further that, Petitioner is not liable for any claim, debt or

other liability / obligation (past, present or future) of the Developer or Respondents Nos. 4-6 in relation to the Project or the Subject Land;

(c) Issue a writ of *mandamus* or a writ in the nature of *mandamus* or any other appropriate writ, order or direction requiring Respondent No. 3 to consider the applications made by or on behalf of the Petitioner in respect of the Project on the Subject Land; for completing the New Building; or for any other certificate, clearance or permission (including but not limited to the grant/ revalidation of permissions and sanctions and issuance of part/ full Occupation Certificate).”

4. We do not think that there is any question of us issuing the mandamus that is the subject matter of prayer clause (a). Ultimately, if any flat or flats are charged as security or are mortgaged, then the lenders or persons in whose favour security is created will surely be covered by a Resolution Plan and may also be part of the committee of creditors. It is for the National Company Law Tribunal (“NCLT”) to sanction or not sanction a Resolution Plan. The Petitioners’ claims will be decided in accordance with the IBC. Essentially, therefore, prayer clause (a) would amount to determining the contours or limits of that Resolution Plan before one has even passed through the Committee of Creditors (“COC”) let alone been placed before the NCLT. The same is equally true of prayer clause (b) and (c).

5. Now the society does have an issue on its hands namely that far too much time has been spent without the development actually being brought to fruition. But the remedies of the society clearly lie

elsewhere and not by way of a writ in this Court and certainly not at this stage.

6. For these limited reasons, we decline to entertain the Writ Petition but we expressly reserve to the Petitioners the liberty to make appropriate representations, whether these are before the Resolution Professional, the COC or the NCLT/other appropriate forum at any stage including expressly for leave to proceed with the construction or to exclude certain flats covered by the securities or mortgages from the Resolution Plan under consideration.

(M.M. Sathaye, J)

(G. S. Patel, J)