

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 722 OF 2024

Infra Poonam Developers LLP

...Petitioner

Versus

The State of Maharashtra through Upper
Secretary & Ors

...Respondents

Mr Rishikesh Soni, *i/b Prayag Joshi, for the Petitioner.*

Mrs Uma Palsuledesai, *AGP, for the Respondent-State.*

Mr PG Lad, *with Ms Shreya Shah, for MHADA.*

Mr Subhash Bane, *with Ms Neha Bane, for Respondent No 5.*

Ms Shubhra Swami, *i/b Ms Kinnari Mehta, for Respondent No 6.*

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

DATED: 21st March 2024

PC:-

1. We refuse to get into the question of whether the Petitioner, a developer was victimized, traumatized, harassed or otherwise subjected to all manner of wicked things by another private party, namely Respondent No 6. The two were in partnership. Those partnership disputes are of complete irrelevance to the Maharashtra Housing And Area Development Authority (“MHADA”). They have no consequence or bearing on the obligations under law of a developer to tenants/occupants.

2. Essentially, what we have been told is that because there are private disputes within some partnership, therefore the tenants must suffer, and transit rent can remain in arrears until the High Court intervenes, and development can be delayed indefinitely. Any submission of this kind has only to be stated to be most emphatically rejected.

3. Mr Lad on behalf of MHADA states that the proposal for acquisition of the property under Section 91A of the Maharashtra Housing and Area Development Authority Act (“**MHADA Act**”) has already been sent to the Government. The Government has in fact approved that proposal. Now, what the Petition seeks is that we must exercise our jurisdiction under Article 226 of the Constitution of India to set aside the Government approval to the acquisition. The additional prayer clauses (a-1) and (a-2) now seek the impossible which is a mandamus to MHADA to decide an application in a particular manner and to grant a fresh No Objection Certificate (“**NOC**”). The second prayer clause (a-2) is equally unsustainable. It seeks some mandamus directing Respondents Nos 2 to 4, namely MHADA and its officers to issue all permissions and sanctions in favour of the Petitioner. We can never issue a mandamus of this kind.

4. We find no reason to interfere with the State Government order. That decision is not shown to us to suffer from any procedural vulnerability. It cannot be said that the order of the State Government that is challenged is irrational or arbitrary. What the Petition in substance seeks is the exercise of our discretion under

Article 226 on a question of fact that relates to a private dispute between the Petitioner and Respondent No 6. These are not considerations that will weigh with us.

5. We reject the Petition but permit the Petitioner to make an appropriate representation to the State Government in its Housing Department. That application must be made within two weeks from today. If any such application is made, notice will have to be given to the society and the society will have to be heard as will MHADA. It is open to the society to point out that there are still pending arrears of transit rent that have not been cleared and to make a submission in that regard. If so made, that application will be decided within a period of four weeks thereafter. The Petitioner may also seek before the Housing Department a temporary stay on the acquisition process, and which the Society will be entitled to oppose. We are not deciding the issue solely because it is based entirely on factual aspects relating to a partnership dispute.

(Kamal Khata, J)

(G. S. Patel, J)