

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 906 OF 2024

Thelma Jude Romell & Anr ...Petitioners
Versus
 The Municipal Corporation of Greater Mumbai ...Respondents
 (MCGM) & Anr

Mr GS Godbole, Senior Advocate, with Kaustubh Thipsay, i/b
Rahul Soman, for the Petitioner.
Mr Kunal Waghmare, for the Respondent-MCGM.
Mr Melvyn Fernandes, for Respondent No.2.

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 28th February 2024

PC:-

1. The Petitioners are transferees of a transferee of a transferee of a plot of land and the structure at St Roque Road, Bandra, Mumbai 400 050. The bungalow on it was known as '18 Dalhoff'. The 2nd Respondent is the society. This is a co-operative society of plot owners. The Dalhoff property is one such. The original holders of the plot, namely, the Fonsecas assigned their rights to Doris T Veljee on 27th April 2006. They had a 5/6 share in the property. Doris T Veljee in turn assigned her 5/6 share to one Christopher Jerome. The remaining 1/6 share was also transferred to

Christopher Jerome on 30th August 2007. Christopher Jerome thus became the full Lessee of the plot. By a Deed of Assignment dated 26th March 2008 he assigned the Bungalow and the Plot in favour of one Albeina Sequeira alias Jaya Tuljapurkar. There was one litigation filed in 2008 by the Fonseca against Doris T Veljee and others by which they came to be continuing owners of the plot and seeking specific performance. The present Petitioners became owners and took the leasehold rights from Albeina Sequeira/Jaya Tuljapurkar under a registered Deed of Assignment dated 15th June 2012.

2. The structure is very old. It is in the C-1 category. It is undoubtedly in need of repairs. Because of this pending litigation, the society has in a needlessly loquacious correspondence declined to grant redevelopment permission and said that the Petitioners, as defendants to the Fonseca's suit are not taking active steps to have that suit dismissed. Various litigations strategies are gratuitously advised in the society correspondence. These are entirely uncalled for.

3. What the Petition challenges is a solitary condition imposed by the Municipal Corporation of Greater Mumbai ("MCGM") at Exhibit "T" at page 222, viz., that there must be society No Objection Certificate ("NOC") after which the proposal can be resubmitted. But the society will not grant his NOC until the Fonseca litigation is resolved. That cannot be resolved by variety of reasons, perhaps the most important one of which it is the suit of 2008 filed in the Original Side of this Court.

4. But this does not mean that a structure can be allowed to collapse while a litigation on the Original Side is awaiting its turn.

5. Obviously any work that the Petitioners do on the plot will be subject to the outcome of that suit and that litigation. The society has in its own communication at page 165 already accepted that everything would be subject to the outcome of the litigation. That is correct so far it goes but it only means that the Society should, more correctly, have said that its NOC was being granted subject to this condition. We do not think it could have flatly refused that permission.

6. In any case, so far as the MCGM is concerned, given the facts of the case as we have noted them it is not necessary for the MCGM to insist on the Society NOC. We clarify that so far as the MCGM is concerned: (i) the development will be at the Petitioners' risk and subject to the outcome of the pending civil litigation; (ii) both the society and the MCGM and every officer of the MCGM will stand immediately fully indemnified by the Petitioners against all claims, demands and charges that may be raised or claimed by any party including the plaintiffs in the civil suit.

7. This is adequate protection for the Society and the MCGM. Accordingly, issuing Rule and dispensing with service in the facts and circumstances of the case, making it returnable forthwith, we make Rule absolute in the forgoing terms.

8. The Petition is disposed of accordingly. There will be no order as to costs.

9. It goes without saying that all other conditions and requirements of the MCGM will have to be adhered to and followed.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 5th March 2024.