

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1498 OF 2021  
WITH  
INTERIM APPLICATION (L) NO. 29926 OF 2022  
IN  
WRIT PETITION NO. 1498 OF 2021**

Sunil M Raut & Ors

...Petitioner

*Versus*

The Principal Secretary Housing Department  
Government of Maharashtra & Ors

...Respondents

AMOL  
PREMNATH  
JADHAV

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AMOL PREMNATH  
JADHAV  
Date: 2024.03.04  
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**Mr Aseem Naphade, i/b Vinay B Bhorge for the Petitioner.**

**Mr Suraj Gupte, AGP, for the Respondent-State.**

**Mr PG Lad, with Sayli Apte & Shreya Shah, for Respondents Nos 2 &  
3.**

**Mr Kunal Waghmare, for the Respondent-MCGM.**

**Ms Jennifer Michael, with Manisha Prajapati, i/b DH Shah for  
Respondent No 6-Developer.**

**Mr Sarosh Bharucha, i/b Shweta Tingre, for Respondent No 7-Society.**

**Mr SK Dhekale, Court Receiver, Present in Court.**

**CORAM    G.S. Patel &  
              Kamal Khata, JJ.  
DATED:    1st March 2024**

**PC:-**

1. The reliefs sought in the Petition are overambitious. Fortunately for the Petitioners, matters have resolved themselves.

There are 33 Petitioners. They are some of the members of the 7th Respondent society at DN Nagar, Ganesh Chowk, Andheri (West), Mumbai 400053. On this Plot, under redevelopment in phases are Building Nos 18 to 21 and 23 to 26. We are concerned only with Building Nos 23 and 26.

2. Petitioners Nos 1 to 9, 17 to 27, 31 and 32 (totally 22) are all in Building No 23. Petitioner No 13 actually has no business being in this Petition at all. He was covered by the first phase of the project and has already been rehabilitated. This is typically what happens in these Petitions, where without regard to individual facts wholesale claims are made in an indiscriminate fashion. The other nine Petitioners are in Building No 26.

3. It is necessary to state this because Building No 23 is the one that will receive priority clearance.

4. Of the 33 Petitioners, Permanent Alternate Accommodation Agreements (“PAAA”) are signed with 32, except for the original Petitioner No 5, Yashoda B Pawar. She has died. She has five heirs. Their names and addresses are given below.

| Sr. No. | Name                  | Address                                                                               |
|---------|-----------------------|---------------------------------------------------------------------------------------|
| 1.      | Mr Santosh Bapu Pawar | 95/301, Shree OM CHS, Gorai-2, Borivali West, Mumbai 400 092.                         |
| 2.      | Mr Sachin Bapu Pawar  | Room No. 24, Suvidha CHS, Plot No. 67, Swami Vivekanand School, Gorai, Borivali West, |

|    |                              |                                                                                                                      |
|----|------------------------------|----------------------------------------------------------------------------------------------------------------------|
|    |                              | Mumbai 400 091.                                                                                                      |
| 3. | Mr Samir Bapu Pawar          | Flat No. A/19, 4th Floor,<br>Surabhi CHS, Opp. Amba<br>Bhavani Mandir, Kopar<br>Road, Dombivali (W),<br>PIN 421 202. |
| 4. | Smt Swati Bapu Pawar         | Madhurantna Building,<br>Near BNP Complex, Room<br>No. 1, Ground Floor, Kopar<br>Gaon, Dombivali West, 421<br>202.   |
| 5. | Smt Shubhangi Anant<br>Davre | 23/940, DN Nagar Shree<br>Asshtavinayak CHS Ltd,<br>Andheri West,<br>Mumbai 400 053.                                 |

5. Obviously, Mr Naphade and his attorney cannot represent these heirs nor make a statement on behalf of a deceased Petitioner No 5. At the same time, since original Petitioner No 5 was in Building No 23 we cannot drop her name entirely from the array of Petitioners and simultaneously also not join her heirs.

6. Accordingly, we order the deletion of Petitioner No 5 as a party Petitioner (the numbering of Petitioners is not to be changed because that will only cause greater confusion). The five heirs of Yashoda Pawar will be joined as Respondents Nos 23(a) to 23(e) to the Writ Petition.

7. Those of the 32 remaining Petitioners who are in Building No 23 state through Mr Naphade that they will vacate their respective premises in Building No 23 by 31st March 2024 and further undertake not to seek an extension of time before this Court or any

other Court, whether in this proceeding or in any other proceeding. We accept that as an undertaking to the Court. To ensure that there is no ambiguity, we direct the Court Receiver, High Court of Bombay to be present on site at 5.00 pm on 31st March 2024. If any person has not vacated, the Court Receiver with the assistance of the local police authorities from the DN Nagar Police Station will proceed to remove that non-cooperating person/s and deliver possession to the society or the developer's representatives as the case may be.

8. For those of the nine Petitioners who are in Building No 26, presently there is no requirement of passing an order to vacate since that project will be taken later.

9. Ms Michael states on behalf of the developer that the developer and the society will jointly give notice to each of the other members in Building No 26 of not less than six weeks to vacate. Those Petitioners who are in Building No 26 agree and give an undertaking to the Court to vacate within the time specified in the notice and similarly not to seek any extension of time for that purpose from this Court or any other Court, whether in this proceeding or any other proceeding.

10. Mr Napahde makes bold to state that there are other occupants who have not come before the Court. But the submission more or less answers itself. If those persons have not come before the Court, there is no question of us hearing a non-party or passing protective orders. Obviously, what applies to one class must apply to

all. We are making it clear that we are not making a special provision for any other occupant in Building No 23 or 26. What is set out in this and previous orders and in the PAAAs will be applicable to every single member in occupation in Building Nos 23 and 26 and each of them will be entitled to the execution of a PAAA and will have the same benefits as regards transit rent, etc as applicable to all other members.

11. So far as deceased Petitioner No 5 is concerned, and her heirs, we will have to make separate provisions.

12. We appoint the Court Receiver, High Court Bombay to take formal possession of her Unit No 940 in Building No 23. The Court Receiver will inventory the effects and possession inside the premises. A copy of the inventory will be given to both the society and the developer through their respective Advocates. The Court Receiver will seal the premises, but this is with the condition that all the heirs may apply by consent to the Court Receiver for an opening of the premises. We do not want any controversy between the heirs. The Court Receiver will not hand over the keys nor open the premises at the instance of only one of the heirs without the consent of all the others.

13. We are told that transit rent for the deceased Petitioner No 5 has been deposited with the society as has been done for all other members. The society should not be involved in any dispute between the heirs of deceased Petitioner No 5. The society will therefore deposit the entire amount of transit rent due in respect of

the membership/occupancy of deceased Petitioner No 5 with the Court Receiver, High Court of Bombay within one week from today. The amount is to be invested until further orders. Future amounts of transit rent are also to be paid by the developer to the Court Receiver, High Court Bombay. Those amounts will also be periodically invested.

14. In the meantime, the developer will send to the Court Receiver, High Court of Bombay a standard form PAAA on the same terms as has been executed with all other Petitioners and members in respect of the rights of deceased Petitioner No 5. The Court Receiver is hereby authorised to execute and register that PAAA for and on behalf of deceased Petitioner No 5 and the heirs of deceased Petitioner No 5.

15. This position will continue until possession of the redeveloped premises is ready after an Occupancy Certificate (“OC”) is obtained. By that time, the heirs of Petitioner No 5 must obtain representation to the estate or must arrive at some understanding or agreement, including one with sufficient indemnities to the developer, the society and the Maharashtra Housing and Area Development Authority if only one of them is agreed or held to be entitled to the benefits of the redevelopment in place and instead of deceased Petitioner No 5. If that is not done by the time possession is ready, the developer will deliver possession to the Court Receiver, High Court Bombay who will then place a report before the Court for further directions.

16. We clarify that it is open to the five heirs at any time to make a formal Interim Application in this Court and in this Writ Petition irrespective of the fact that this is disposed of, specifically for the purpose of release of the transit rent (with accrued interest) to some or all of the heirs as may be agreed or ordered a competent Court in separate proceedings to be taken in that behalf and also in regard to possession of the final redeveloped flat.

17. We make it clear that the PAAA that is to be executed and registered by the Court Receiver on behalf of the heirs of deceased Petitioner No 5 is clearly in a representative capacity. It will not be necessary for the developer to execute a fresh PAAA with the heirs or such of the heirs as may be found entitled to possession of the redeveloped flat. The necessary documentation in the form of orders of the Court, Affidavits and indemnities will suffice for this purpose.

18. The same arrangement as made from Building No 23 regarding transit rent and PAAAs will also operate for Building No 26. Parties will arrange between themselves to have these executed PAAAs registered with the Sub-Registrar of Assurances.

19. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)