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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1669 OF 2024**

Nikesh Pravinchandra Shah & Ors ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

Mr Sushil M Shukla, *i/b Janki Sampat, for the Petitioner.*
Mr Mutahhar Khan, *with Vishal Mehta & Ranjot Panesa, i/b MV Law Partners, for Respondent No. 6.*
Mr Mayur Khandeparkar, *with Aseem Naphade, i/b Yogesh Adhia, for Respondent No 7.*
Mr Abhay L Patki, *Addl GP, with Nazia Sheikh, AGP, for the Respondent-State.*
Ms Rupali Adhate, *for the Respondent-BMC.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 2nd April 2024

PC:-

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1. Heard.
2. The Petition is entirely unsustainable in our writ jurisdiction. The four Petitioners, of which one is not even a member of the 6th Respondent society, claimed that the society was “arm twisted” by the 7th Respondent, a Jain Derasar Trust, into signing a Development Agreement with the 9th Respondent developer. If that

is the gravamen of the charge, then it is undoubtedly an allegation of coercion or at least a species of fraud that would require to be pleaded with all material particulars and then proved through evidence and cross-examination. None of this is possible in our writ jurisdiction.

3. Before we even turn to Mr Khandeparkar for the 7th Respondent Jain Derasar Trust, it is important to understand what the 6th Respondent society has to say. We are informed that the General Body of the society met and resolved by majority to appoint the 9th Respondent as a developer. One of the issues was indeed the question of the Jain Derasar Temple. It is a very old structure. The developer proposed that the sanctum sanctorum and the structure of Jain Derasar Temple would be retained. The 9th Respondent has in fact shown this in the IoD and it is not coming out of the society's component on re-development. These four Petitioners have an objection on this because they maintain that this is a 'pressure tactic' by the Jain Derasar Trust. If three of the Petitioners are members of the society then this is a dispute between a member and the society and there is a separate forum available for the adjudication of those disputes. The one who is not a member of the society cannot maintain this Petition against the members of a society.

4. None of this partakes of the nature of a public law dispute that can be assessed in our writ jurisdiction. If there was any doubt about this it is surely set to rest by the wording of prayer clauses (b), (c), (d), (e), (f) and (g). No matter how they may be worded to

involve Respondents Nos 1 to 5, these are all in the nature of entirely private disputes. They read thus:

“(b) This Hon’ble Court be pleased to issue writ of Mandamus or any other writ in the nature thereof or any other writ, order or direction against the Respondent No. 1 to 5 and 8 to take immediate action against the Respondent Nos. 6 and 7 to demolish the illegal and unauthorised construction of the structure and further to restore the illegally converted Garage and other areas as per the occupancy certificate as per the plan on the land plot no. 64 (B) part of TPS III, situated at Kasturba Marg No. 4, Borivali East, Mumbai – 400 066;

(c) This Hon’ble Court be pleased to issue a writ of Mandamus or in nature thereof or any other writ, order or direction, against the Respondent Nos. 1 the Principal Secretary, Urban development department state of Maharashtra, to initiate necessary departmental inquiry and action against the Respondent Nos. 2 to 5 and 8 the commissioner of Brihan Mumbai Municipal Corporation and his/her subordinate officers (those responsible in the matter) for their misconduct;

(d) This Hon’ble Court be pleased to pass ex-parte order or direction against the Respondent Nos. 2 to 5 to immediately vacate the said structure of the Respondent No. 7 and seal the same;

(e) This Hon’ble Court be pleased to direct the Respondent No. 8 to take charge of the affairs of the Respondent No.6 i.e., the society and appoint an administrator for efficient functioning of Respondent No.6;

(f) This Hon’ble Court be pleased to restrain the Respondent No. 9 from carrying out any construction activities on the said plot of land and also restrain the Respondent No.9 from taking any action / and or steps in

furtherance of the Development Agreement allegedly executed between Respondent No. 6 and Respondent No. 9;

(g) This Hon'ble Court be pleased to declare all and/ or any Agreements executed by and between the Respondent No.6 and Respondent No.9 to be void ab initio and null and void as the signatures of the members of the Respondent No.6 have been obtained under coercion by putting them under duress of the members of the Respondent No.6 being rendered homeless after the society building is categorised as C-1 category and the same shall be demolished by Respondent No. 2 and 3, 4 & 5 in furtherance of the said categorization."

5. Reliance is heavily placed on the Brihanmumbai Municipal Corporation ("BMC") communication of 17th July 2023 at Exhibit 'F' at page 73. This was in reference to a complaint made by the 1st Petitioner about the Jain Derasar Temple. The sum and substance of the BMC reply is that it had received a response from a trustee of the Jain Derasar Trust along with the copy of the Permanent Alternate Accommodation Agreement between the Jain Derasar Trust and the 9th Respondent developer. The BMC therefore said it was not desirable to initiate action against the Jain Derasar Trust. The 1st Petitioner's complaint was simply noted and recorded.

6. On this basis, learned counsel for the Petitioner would have us hold that the entire Jain Derasar Temple is illegal, unauthorised, must be demolished and that the BMC has held so. If anything, it is to the contrary.

7. In any case we are told that the entire building except the Jain Derasar Temple has already been demolished or brought down. The attempt clearly seems to be to stall redevelopment so that the views of these four Petitioners can be made to prevail over the majority view of the society in the General Body Meeting. The question is not about religion but of the dominance of the law relating to societies. The majority view of the society in a properly convened General Body Meeting will always prevail and that is what will govern all steps going forward.

8. We have not the slightest hesitation in holding that this Petition is not just misconceived. It is a deliberate and thoroughly mischievous abuse of the process of this Court. It ought never to have been filed. The Petition is rejected.

9. Mr Khandeparkar for the Jain Derasar Trust insists that the Petition should not just be dismissed but the dismissal must be accompanied by an order of costs. The Jain Derasar structure is shown in the IoD as a retained structure. That automatically means that it is not unauthorised. The prayers in the Petition include a prayer for the appointment of an administrator. That could never have been made in a Writ Petition under Article 226 of the Constitution of India.

10. We agree that this Petition is mischievous and, far from there being a pressure tactic by the Derasar Trust, the Petition is precisely such a pressure tactic by the Petitioners to impose their minority view on the Society. Incidentally, at the General Body meeting

which at least some of the Petitioners attended, none raised this grievance.

11. Each of the Petitioners will pay costs quantified at Rs 1 lakh each, payable to the society (not to the Jain Derasar Trust).

12. Costs are to be paid within a period of three weeks from today.

(Kamal Khata, J)

(G. S. Patel, J)