

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3082 OF 2016

Horizon Promoters India Ltd & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Nipkesh Jain, *with Karl Tamboly (Online) i/b Wadia Gandhi & Co, for the Petitioner.*
Mr Kunal Waghmare, *for the Respondent-MCGM.*
Mr GS Godbole, *Senior Advocate, with Vasim M Siddiqui, for Respondent No. 4(j).*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 17th January 2024

PC:-

1. **Rule, returnable forthwith.** Affidavit in Reply of the completely unnecessarily joined 4th Respondent is to be filed in Registry. We have seen a copy.
2. In our view, the 4th Respondent has no interest in the subject matter of this Writ Petition whatsoever.
3. Heard Mr Jain, learned Counsel for the Petitioner.

4. The only prayer in the Petition at page 11 reads thus:

“(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus and/or Certiorari or a Writ in the nature of Mandamus and/or Certiorari or any other appropriate Writ, Order or direction ordering and directing the Respondent Nos. 1 and 2 to delete special condition no. 8 in the IOD viz. Intimation of Disapproval CHE/ES/1802/T/337(New) dated 7th June, 2016 which requires the Petitioners to obtain the no-objection certificate of Respondent No. 3;”

5. Respondents Nos. 4(a) to 4(m) are the heirs of the original Respondent No. 4, Laxmibai. She was once upon a time the lessee or owner of land situated at Plot No. 156-A, CTS Nos. 1360, 1360/1 to 8 of 677.50 square meters at Valji Ladha Road, Mulund West, Mumbai 400080. This land is held on a long 999 year lease originally in favour of one Devsey Khetsi. The heirs of Devsey Khetsi assigned their lease hold rights on 31st January 1942 in favour of one Thackersay Nenshi. Then on 17th April 1947 Nenshi further assigned his leasehold rights to Laxmibai. She became a member of the 3rd Respondent, the Vijay Co-operative Housing Society Ltd. There is a pending membership dispute between her (or her heirs) and the Vijay CHSL.

6. On 21st March 1978, according to the Petition, Laxmibai sold or assigned her leasehold rights in that land with the structures standing on it to one Sajashiv Vasudev Guruji. In turn, by an agreement of 1st April 1978, Guruji assigned his rights to one Bimal Enterprises. Then Bimal Enterprises constructed a building on the land (next to the already existing building) and entered into flat purchase agreements under the Maharashtra Ownership Flats Act,

1963 (“MOFA”), with 18 flat purchasers and three shop owners. Among those who received a flat was Laxmibai herself. She was allotted Flat No. 6. The flat holders of the two existing buildings and Laxmibai then formed the second Petitioner Society. She became a member of the 2nd Petitioner, the Mulund Vimal Vihar Co-operative Housing Society (“MVV CHSL”). Then Laxmibai executed a gift deed transferring her flat to her son Suryakant. In that gift deed, Laxmibai noted that she had sold the property to Sadashiv Guruji and had received Flat No. 6 in consideration.

7. Bimal Enterprise was required to execute a conveyance or an assignment in favour of the MVV CHSL with Laxmibai joining possibly as a confirming party.

8. No such conveyance was executed. MVV CHSL applied for a deemed conveyance under section 11 of MOFA.

9. In those proceedings, Laxmibai was issued notice. She wrote a letter on 7th October 2013 saying that she had no intention to deny the conveyance to the MVV CHSL, but due to her advanced years could not do so. A copy of this letter is at Exhibit “E”.

10. The District Deputy Registrar on 19th December 2013 passed an order granting a conveyance in favour of the MVV CHSL. A deed of unilateral conveyance dated 31st December 2013 came to be drawn up and executed in favour of the MVV CHSL.

11. By this time, the building on that plot was in a dilapidated condition. The original building had over 100 members. All but four members had vacated the building.

12. Therefore, the members of the MVV CHSL appointed the 1st Petitioner, Horizon Promoters, to redevelop the MVV CHSL's property. There is a registered development agreement dated 31st December 2013 by which the MVV CHSL granted development rights to Horizon Promoters Pvt Ltd.

13. Surprisingly, Laxmibai then filed a Writ Petition No. 1974 of 2014 challenging the deemed conveyance. That Writ Petition was dismissed on 14th March 2014 by a learned single Judge of this Court. The order in question, a copy of which is at page 118, notes in paragraph 4 inter alia that Laxmibai had in writing on 7th October 2013 (the same letter that is at Exhibit "E") clearly said that she had no objection to the deemed conveyance.

14. Now that this letter was noted as part of a Court order and against which there does not seem to have been any appeal or further challenge, we do not see how it is possible for Laxmibai or her heirs to go back on that finding or to re-open that issue.

15. The property card also stands in the name of the MVV CHSL. Laxmibai had filed an appeal before the Superintendent of Land records challenging the mutation entries in the revenue records. That appeal was dismissed on 30th April 2015. Undeterred,

Laxmibai went in appeal to the Deputy Director of Land Records. That appeal too was dismissed on 15th July 2016.

16. Horizon Promoters sought permission from the Municipal Corporation of Greater Mumbai (“**MCGM**”) and its executive engineer (Respondent Nos. 1 and 2) and submitted various documents.

17. An Intimation of Disapproval (“**IOD**”), the typical building permission worded in the negative form, came to be issued in the name of the MVV CHSL. on the application of Horizon Promoters on 7th June 2017. condition No. 8 of that IOD, which is the subject matter of the challenge prayer clause (a), is a requirement that an No Objection Certificate (“**NOC**”) must be obtained from the 3rd Respondent, the Vijay CHSL.

18. The Vijay CHSL has told the Petitioners that it cannot issue an NOC. It is facing co-operative court proceedings initiated by Laxmibai in which she has obtained some orders.

19. We are unable to see how such a condition could ever have been imposed. Mr Jain, learned Advocates for the Petitioner, is correct in saying that this is a routine and pro-forma condition without any application of mind to the facts and circumstances of the case. If there is a deemed conveyance in favour of the MVV CHSL, and this has till date not been set aside, then obviously the MVV CHSL has rights over the property that is covered by the deemed conveyance (but no further) and it is entitled to enjoy the

benefits of ownership of that property including all fruits of exploitation of the development potential. This can never be made subject to the NOC of some other entity which does not have rights in respect of the property that is the subject matter of the deemed conveyance.

20. We are wholly unable to understand to what it is precisely that the demanded NOC of the Vijay CHSL can ever apply. At best, Vijay CHSL is an apex Society. It holds no conveyance in its own name over the MVV CHSL land covered by the deemed conveyance. There may be adjoining societies but the deemed conveyance in favour of the MVV CHSL clearly demarcates the property that is of the ownership of that society. It is that property and that property alone that can be taken up for development and the Petitioners are seeking no further rights beyond the limits or boundaries of the property that is the subject matter of their deemed conveyance.

21. Mr Godbole appears for the heirs of Laxmibai. As we said, we are unable to understand what position she can possibly take in this, given that there is a deemed conveyance and that there is no present challenge and no protective order in Laxmibai's favour against the MVV CHSL or its deemed conveyance. Any case Laxmibai may have against the Vijay CHSL is entirely unaffected.

22. In the co-operative disputes, the MVV CHSL, for some reason that we are wholly unable to understand sought to intervene and to be made a respondent. Unfortunately for the MVV CHSL

that Application was allowed. Then the MVV CHSL, perhaps even more unwisely, sought to contest the Application made by Laxmibai. That application by the MVV CHSL was rejected. The injunction that Laxmibai has obtained is in regard to her membership. It has absolutely nothing whatsoever to do with the deemed conveyance of the land in favour of the MVV CHSL. Laxmibai's challenges to that deemed conveyance have failed and that aspect of the matter is concluded. It cannot be reopened in roundabout manner.

23. In any event we are not deciding any of those rights inter se between Laxmibai or her heirs and Vijay CHSL. We are not even required to do so. That is not the ambit of this Petition.

24. Mr Godbole's submission that this Petition involves no question of public law but is a private dispute has only to be stated to be rejected. The question is whether the planning authority, i.e., the MCGM, could ever have insisted that an NOC from the Vijay CHSL was required as a condition attached to the IOD. Clearly, the MCGM could not have done so.

25. Mr Waghmare on behalf of the MCGM states that the IOD has lapsed by passage of time. But that IOD was of 7th June 2016. This Petition was filed on 30th September 2016 while that IOD was very much still valid. The fact that they may have been a lapsing by operation of statute despite the pendency of the Petition will not result in a dismissal of the Petition.

26. Accordingly, we make Rule absolute in terms of prayer clause (a). The MCGM is required to re-validate the IOD for a period of one year but without condition No. 8.

27. The Petition is made absolute in these terms in the facts and circumstances of the case. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)