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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 705 OF 2024

Hirabai Petha Dodia & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

WITH
WRIT PETITION NO. 1248 OF 2024

Saifuddin Adamali Arsiwala & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

Mr Anoshak Daver, *with Kevin Pereria & Gaurav Lele, i/b Disha Jain, for the Petitioners in WP/705/2024.*
Mr Shishir Joshi, *i/b Priti Joshi, for the Petitioners in WP/1248/2024.*
Mr AY Sakhare, *Senior Advocate, with Pooja Yadav, for the Respondent-BMC in both Writ Petitions.*
Mr Sharan Jagtiani, *Senior Advocate, with Bhavik Manek, i/b Sharad Wackchoure & Uday A Mishra, for Respondents Nos 3 & 4 in both Writ Petitions.*
Mr Amey Deshpande, *for Respondent No 5 in both Writ Petitions.*
Mr Milind More, *Addl GP, for the State in WP/705/2024.*
Mr Prashant Kamble, *AGP, for the State in WP/1248/2024.*

CORAM **G.S. Patel &
Kamal Khata, JJ.**
DATED: **5th April 2024**

PC:-

1. These Petitions are completely misconceived. Writ Petition No 705 of 2024 is filed by 122 people. Writ Petition No 1248 of 2024 is by 17 who claim to be commercial tenants. All these people are residential tenants of what is called 'Rasool Jiwa Compound' and 'Mehta Building'. To cut a very long story short, there is a development covering both plots. It also covers multiple classes of occupants. There are the principal municipal tenants there are Project Affected Persons ("PAPs") and then there are slum encroachers.

2. In Writ Petition No 705 of 2024, Mr Davar appears for the Petitioners. The prayers in this Petition at paragraph 69 from pages 138 to 140 are as follows:

“(a) That this Hon’ble Court be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ or Direction of this Hon’ble Court to call for the records and proceedings pertaining to (i) Letter of Intent dated 30.03.2022 (Exh-X) r/w Resolution No.148 dated 02.03.2022 and Resolution No.1765 dated 03.03.2022 (of Improvement Committee and Corporation House, BMC and (ii) Orders dated 18.07.2023 and 10.08.2023 passed by BMC on Personal Hearing in pursuance of Order dated 18.04.2023 in Writ Petition in 3424 / 2022 and quash and set aside the same as illegal, arbitrary, malafide, perverse, erratic, irrational, erroneous, unfair and discriminatory and issued in Colourable Exercise or Powers by BMC not in accordance with law;

(b) That this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any

other appropriate Writ, Order or Direction to BMC to treat Tenants of amalgamated Rasool Jiwa Compound and Mehta Building, in manner similar to BMC property Kamal Patra Chawl, Ambika Mill Compound, Senapati Bapat Road, Mumbai-400 013, without any discrimination (Art.14 of Constitution of India) and comply with BMC Property Redevelopment Revised Guidelines dated 10.10.2016 and dated 17.11.2020 and the Democratic Governance of BMC as a “State” under Article 12 of the Constitution of India and permit the Petitioners and other Tenants to appoint a Competent Developer after issuing Mandatory Written Informed Consent under Reg. 33(7) of DCR 1991 or DCPR 2034; for redevelopment of BMC amalgamated property Rasool Jiwa Compound and Mehta Building, C.S. No. 1/2000 and C.S. No.2002 respectively, Keshavrao Khadye Marg, Mumbai-400 011.

(c) In the alternative to prayer (b) above, this Hon’ble Court be pleased to issue an appropriate Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ or Order or a Direction to BMC to issue Public Tenders and invite Bids for appointment of new Competent Developer after ascertaining the Concurrence and Wishes of the Tenants/Occupants of amalgamated Rasool Jiwa Compound and Mehta Building property at C.S. No. 1/2002 and C.S. No. 2000, Keshavrao Khadye Marg, Mumbai-400 011.”

3. Now there is no manner of doubt that all the principal tenants are members of the 5th Respondent society. This will be of some consequence because the Development Control Regulations, 1991 (“DCR”) requires the consent of 70% of the tenants and obviously this will not include PAPs or slum dwellers for the redevelopment.

4. The 3rd Respondent, MK Enterprises, is a partnership concern. The 4th Respondent is Triumph Urban Developers Pvt Ltd (“**Triumph**”), also a developer but the partners of MK Enterprises have a controlling interest in Triumph Urban Developers. The prayers in Writ Petition No 705 of 2024 indicate two things clearly. *First*, that there was indeed a meeting of the society and the General Body Resolution. Several Petitioners were amongst those who attended. There are allegations made that the meeting was not properly called and that the minutes of that meeting of 9th December 2018 are “fraudulent”. *Second*, it is submitted that many of the Petitioners or at least the principal tenants granted consents but have then purported to (unilaterally) withdraw these.

5. We turn to some of the grounds in Writ Petition No 705 of 2024 and we do so now for a limited purpose. Paragraph 54 at page 133 says that the consents given in 2004-2006 and 2010 to MK Enterprises were “rightly terminated”. This termination is alleged to be for “loss of faith and failure of MK Enterprises to develop the property”. That is surely a disputed question of fact.

6. The demand that the development should be according to some other pattern cannot be accepted. The grounds of challenge are not to the Society Resolution of 2018 at all but to the Letter of Intent (“**LoI**”) which is of 30th March 2022 and two orders of 18th July 2023 and 10th August 2023. Ground (1) begins by saying that the consents are “stale”. We fail to understand what this is supposed to mean. There is another ground which alleges that the 9th

December 2018 General Body Meeting was ‘fraudulent’ and that the attendance sheet is bogus. This obviously cannot be the subject of any writ proceeding. More to the point, there is not a single relief sought as a consequence of such a submission.

7. Mr Jagtiani appearing for MK Enterprises and Triumph draws our attention first to a document annexed to the Petition itself at page 555, Exhibit “AA” which is a speaking order of 18th July 2023. This order is one of the two mentioned in prayer clause (a) of the Petition. This tells us that what the Petitioners are seeking is judicial review but in effect what they want is the impermissible in writ jurisdiction, i.e., a substitution of the order on merits rather than an assessment of the decision-making process.

8. Even on the merits, and we are constrained to note this because of the manner in which this matter has proceeded before us, the order in question dealt with the demand made by some persons for a reverification of consents or for fresh consents. It is important to note that the attendance at that hearing is noted from pages 560 to 561. The order of 18th July 2023 was pursuant to two orders of 18th April 2023¹ and 20th June 2023² of this Court in Writ Petition No 3424 of 2022. The order of 18th July 2023 begins with a detailed tracing of the history of the project. Paragraph 2 of the order at page 566 notes that the tenants submitted affidavits of many occupants and tenants, in all 176, supporting a representation but that this was

1 *Prakash Tukaram Jadhav & Ors v State of Maharashtra & Ors*, Order dated 18th April 2023, 2023:BHC-OS:3072-DB.

2 *Prakash Tukaram Jadhav & Ors v State of Maharashtra Urban Development Department & Ors*, Order dated 20th June 2023 in Writ Petition No 3424 of 2022.

opposed by both the society and the developer. For our purposes it is the society's opposition that will be of consequence. The finding was that the tenants/occupants had failed to prove that there was any illegality in the verification of the consents. The Petitioners' intention, obviously, is to have the writ court sit in appeal — actually a substantive First Appeal — over this order.

9. Paragraph 4 dealt with an issue that seems to be central to this case, namely that MK Enterprises, though first chosen, was 'substituted' by Triumph. This is dealt with in that order in Paragraph 4 in the following manner:

“4. Issue of alleged change of developer/transfer and assignment of development rights from M/s. M.K.Enterprises to Triumph Urban Developer Pvt. Ltd.

The next contention of the Applicants is that there is a transfer of development rights and a change of developer from M/s. M.K.Enterprises to Triumph Urban Developer Pvt. Ltd. which is illegal and fraudulent in violation of guideline 17.11.2020.

Shree Jagruti CHS (proposed) and Developer in this regard stated that the Resolution passed by Jagruti CHS (proposed) dated 9.12.2018 clearly records that Mr. Ibrahim Momin had informed to all the members that he is proposing to change the name of entity for carrying out the redevelopment work smoothly for technical/financial/accounting point of view. He also informed that Mr.Ibrahim Momin, Mr.Mohammed Momim, Mr.Yusuf Momin, Mr. Suhail Yakub and Mr.Aatif Yakub shall be directors of the new entity. It further records that though the entity of the developer is changed, Mr.Ibrahim Momin shall be personally responsible for the said redevelopment and after the

discussion the Resolution of change of entity from M/s. M.K.Enterprises to Triumph Urban Developer Pvt.Ltd. has been passed unanimously. Thereafter M/s. M.K.Enterprises by its letter dated 11.12.2018 informed MCGM about the said unanimous Resolution dated 09.12.2018 and the redevelopment will be carried out under the name of Triumph Urban Developer Pvt. Ltd. Instead of previously named M/s. M.K. Enterprises. Thereafter, Triumph Urban Developer Pvt. Ltd. Also by its letter dated 12.12.2018 to the Representation informed MCGM about the said unanimous resolution dated 09.12.2018 for change of entity of the developers and the same been done for smooth execution with respect to technical/financial/accounting matters of the project. The MCGM based on the said Resolution dated 09.12.2018 by its approval dated 25.01.2019 has approved the said change of entity. Thereafter, the Improvement Committee by its Resolution dated 02.03.2022 and General Body of Municipal Corporation by Resolution dated 03.03.2022 approved the said redevelopment scheme in the name of the new entity and accordingly LOI was issued on 30.03.2022 in the name of new entity Triumph Urban Developer Pvt.Ltd.

Estate Department staff mentioned that with regards to the aspect of MCGM has not followed the MCGM circular dated 17.11.2020 for allowing the said change of developer, the Resolution for change of entity was passed on 09.12.2018 and the Municipal Commissioner approved the said change of entity on 25.01.2019, much prior of the application and enforcement of the said Municipal Guidelines dated 17.11.2020. However as per the guidelines dated 17.11.2020 change of developer is permitted if earlier developer has given NOC and Society has passed GBR thus in this case earlier developer has consented for change in entity of

developer and Society has passed GBR for change in entity therefore it is as per municipal guidelines dated 17.11.2020. Developer further mentioned that it is interesting to note that the Applicants are ready for amalgamation of the said RJC plot and Mehta Plot and joint development through their own developer Deserve Exim Pvt. Ltd. as they themselves tried to appoint the said common developer for both the municipal properties and have no grievance if the FSI of both the municipal properties is exploited by their own developer, however they have serious grievances to the said amalgamated property to be redeveloped by common developer appointed by Society and approved by MCGM. This somewhere smacks of double standards of the Applicants. Considering the submission of developer, society and Estate Department this issue of applicant is not maintainable.”

(Emphasis added)

10. It is impossible to hold that this part of the order is in any way perverse or suffers from Wednesbury unreasonableness. To the contrary, it seems to us that this conclusion is the *only* one that was possible in the facts noted above (and which can hardly be disputed).

11. But what gives the game away is paragraph 5 which clearly shows that these applicants/Petitioners are really only the front or the mouthpiece for a rival developer called D’serve Exim Pvt Ltd (“D’Serve”). This is mentioned in paragraph 4 (extracted above) and is to be read with the submission in paragraph 7 seeking a cancellation of the LoI issued to Triumph.

12. Now this concatenation of factors is very interesting. First, there is a General Body Resolution. That is said to be 'fraudulent'. The attendance sheet is said to be fraudulent. Consents are admittedly given. Then those are impeached and a submission is made that 'fresh consents' or 'fresh reverification' should be done. That argument fails. Then it is said despite the finding in paragraphs 4, that Triumph is unauthorizedly the substitute developer although MK Enterprises had made it clear that for various structural and operational reasons MK Enterprises would be reconstituting itself into another entity but would continue to have control over that entity. Then there is the submission immediately following on this to eject or defenestrate MK Enterprises and Triumph and to bring in D'Serve and finally the prayer to cancel the LoI issued to MK Enterprises and Triumph.

13. Paragraph 20 of this Petition puts the matter beyond all controversy. It is at page 57 of the Petition and it reads thus:

"20. The Tenants/Occupants of Rasool Jiwa Compound thereafter appointed "M/s. D'Serve Exim" as their new Developer in a Tenants/Occupants Meeting convened on 04.11.2018 which was attended by about 149 Tenants/Occupants of the property. By letter dated 13.12.2018 the new Developer "M/s. D'Serve Exim Pvt Ltd" submitted their ascent to act as Developer to the Asstt. Municipal Commissioner (Estate) of BMC. Hereto annexed and marked as EXHIBIT-M is a copy of the Letter of Acceptance dated 13.12.2018 issued by "M/s. D'Serve Exim" to the Asstt. Municipal Commissioner (Estate) of BMC. Petitioners crave leave to refer to and rely upon Minutes of Meeting and Resolution dated 04.11.2018 of Tenants of Rasool Jiwa Compound when produced."

(Emphasis added)

14. We notice these factors at some length because very clearly and explicitly we heard Mr Davar to say yesterday (in direct contrast to what is said in the order and in paragraph 20 of the Petition) that these 122 Petitioners were not and never were seeking the appointment of any particular developer but only the removal of MK Enterprises/Triumph. That submission is directly contrary to everything on record.

15. Apart from anything else, these are internal disputes of a Society. No steps seem to have been taken to assail the general body resolution of 2018 — and it is not assailed even before us.

16. Yesterday Mr Davar then had instructions to withdraw the Petition, and we would have permitted this and readily granted liberty to the Petitioners to adopt appropriate civil proceedings because, as we have noted, there are quite starkly very seriously disputed questions of fact, including allegations of fraud, that cannot be examined in our writ jurisdiction.

17. But Mr Joshi in the companion Petition No 1248 of 2024 took time saying he had no instructions to withdraw. This morning, he has told us he does not have instructions to withdraw and therefore has invited an order on merits. At this point, therefore, Mr Davar withdraws his withdrawal statement and seeks an order of merits in this order.

18. Writ Petition No 1248 of 2024 is conceivably worse. It is brought by some 17 persons. They claim to be bona fide BMC Annexure II Certified Tenants of amalgamated BMC properties. In every other aspect it is word-to-word identical to the other Petition. Only the page numbering is different but that is inevitable because there are fewer Petitioners here than in the other matter. It does not matter which Petition is prior in point of time. The point is that the two are exactly identical and on this identical footing and they will suffer the same fate.

19. A material question that emerges in these two Petitions and many like these is whose interests are being canvassed? Are the Petitions only fronting for a rival developer? Are they even bona fide? Or are they a gross abuse of the process of this Court? In our view the answer to the last question must be in the affirmative. The Petitions are clearly an abuse of the process of this Court and a mischievous and thoroughly motivated invocation of our writ jurisdiction. Literally, these Petitioners have been persuaded to take a gamble with writ petitions. That a delay hurts a developer is obvious. But a delay by a few tenants — at no cost — also significantly hurts the Society and other members, whose rights to re-development are delayed for no fault of theirs. We would ordinarily have been justified in imposing costs. If we refrain from doing so it is because we believe that the Petitioners have been thoroughly wrongly advised, and many of them may not even have been explained the consequences of what is being said or argued in their names.

20. There is now no question of reserving liberty to file civil proceedings.

21. Both Petitions are rejected. No costs.

22. Affidavit in Reply is to be filed in the Registry.

(Kamal Khata, J)

(G. S. Patel, J)