

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3893 OF 2024**

**Kher Nagar Sukhsadan Co-operative
Housing Soc Ltd,**
having its registered office at
CTS No.607 (pt) of Village Bandra (East),
Building no.33, known as 'Sukhsadan',
Kher Nagar, Bandra (East), MHADA layout,
Mumbai 400 051.

...Petitioners

~ versus ~

1. **The State of Maharashtra,**
through the Urban Development
Department,
having its office at Mantralaya,
Mumbai.
2. **Maharashtra Housing & Area
Development Board,**
having its office at Room No.407, 3rd
floor, Gruha Nirman Bhavan
Kalanagar, Bandra (East), Mumbai 400
051.
3. **Resident Executive Engineer, MHADA,**

**SUMEDH
NAMDEO
SONAWANE**

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Mumbai Board,

having its office at Room No. 407, 3rd floor, Grihanirman Bhavan, Kalanagar, Bandra East, Mumbai 400051.

4. Executive Engineer, Building Proposal Department,

having its office at Room No. 407, 3rd floor, Grihanirman Bhavan, Kalanagar, Bandra East, Mumbai 400 051.

5. Chief Executive Officer,

Maharashtra Housing and Area Development Authority, having its office at Grihnirman Bhavan, Kalanagar, Bandra East, Mumbai 400051

6. Municipal Corporation of Greater Bombay,

having its registered office at 5, Mahapalika Marg, Fort, Mumbai 400 001.

7. Tristar Development LLP,

having its office at 9, Survodaya Estates, Tardeo Road, Tardeo, Mumbai 400 034.

8. AA Estates Private Limited (RNA Group Company),

having its registered office at level 6th

floor, RNA Corporate Park, behind
Collectors Office,
Bandra East, Mumbai 400 051.
And also at Raj Kamal, Opp. University
Campus, CST Road, Kalina,
Mumbai 400 098.

9. Harshad Deshpande,

The Resolution Professional appointed
for A. A. Estates Private Limited, having
his office at 403, Kumar Millenium,
Shivtirth Nagar Kaman, Paud Road,
Kothrud, Pune 411 038.

...Respondents

APPEARANCES

For the Petitioners	Mr Pradeep Sancheti, Senior Advocate, with Rohil Bandekar i/b Tejas Shah.
For Respondent Nos. 2 & 5.	Mr Akshay Shinde.
For Respondent No. 7.	Ms Aditi Bhat, with Deeksha Jani, Niket Jani i/b Jani & Parikh.
For Respondent No. 9	Mr Satchit Bhogle, with Joshila Borges.
For the Respondent-State	Mr Milind More, Addl GP.

CORAM : M.S. Sonak &
Kamal Khata, JJ.

RESERVED ON : 3rd September 2024

PRONOUNCED ON : 11th September 2024

JUDGMENT (Per Kamal Khata JJ):-

1. Rule. Rule made returnable forthwith by consent of parties.
2. The Petitioner, a society, is faced with a classic impasse yet again because of the infamous RNA Group company AA Estates Private Limited ("**AA Estates**"). On the one hand, their building is declared unfit for habitation and categorised as "C-1", and on the other, the same authorities refuse to process and grant permission for redevelopment of their building, all because of the Interim Resolution Professional ("**IRP**") appointed for the erstwhile builder, AA Estates (whose contract was eventually terminated) who addressed letters to the authorities not to grant any permissions to the Petitioner.
3. The essential facts for determining the issue are as under.
4. The Petitioner owns the building on the plot of land leased to it by MHADA by a lease dated 12 February 1996. On 16 October 2005, the Petitioner entered into a Development Agreement ("**DA**") with AA Estates, thereby granting redevelopment rights on certain terms and conditions. A General Power of Attorney dated 23 December 2005 also came to be executed.

5. Under the Development Agreement, more particularly clause 13(e), AA Estates was to complete the redevelopment work within 24 months. Admittedly, AA Estates did not take any steps for seven years. Thus, by 5 January 2012, it merely obtained a No Objection Certificate (“**NOC**”) from MHADA.

6. Probably for dearth of better choices or rather for inexplicable reasons, the Petitioner executed a Supplemental Development Agreement on 9th April 2014 with AA Estates. Thereafter, it took almost five months for AA Estates to obtain an IOD which it did on 4th September 2014.

7. In the meantime, the BMC issued notices under Section 353(b), 354, and 354A of the Mumbai Municipal Corporation Act, 1888 (“**MMC Act**”) in respect of the Petitioner’s building. According to these notices, the Petitioner’s building was declared in the C-1 category. One such notice is annexed at Exhibit ‘E’ of the Petition and is dated 10th August 2017.

8. Due to the dilapidated nature of the building, 19 out of the 60 members who were provided transit rent by AA Estates vacated their respective premises. Consequently, due to the non-payment of transit rent, these 19 occupants had no alternative but to re-occupy their respective premises.

9. Despite several correspondences, the AA Estates failed to commence property redevelopment. Thus, after patiently waiting 14 years for AA Estates to redevelop the property, on account of its

continuing failure, the Petitioner terminated the agreement with AA Estates on 9th June 2019 by a decision at a Special General Body Meeting. The decision of the Special General Body Meeting is extracted in the Minutes annexed at Exhibit “F” to the Petition.

10. A notice dated 2nd December 2019 was served on AA Estates communicating the termination of the Development Agreement dated 16th October 2005 and Supplementary Development Agreement dated 6th April 2014. This termination notice is annexed at Exhibit “J” to the Petition.

11. In the meantime, AA Estates was admitted into the Corporate Insolvency Resolution Process (“CIRP”) under the Insolvency and Bankruptcy Code 2016 (“IBC”) by an order dated 14 November 2019 by the National Company Law Tribunal (“NCLT”), Mumbai Bench.

12. Mr Gaurav Khurana, appointed as an IRP, informed the Petitioner through his letter dated 24 December 2019 that a moratorium is applicable to AA Estates’ assets and that, therefore, no coercive action should be taken against AA Estates. On 12 June 2020, the NCLT vacated the order initiating CIRP against AA Estates. The order is annexed as Exhibit “I” to the Petition.

13. On account of this turn of events, the AA Estates addressed a letter dated 8th July 2020 requesting the Petitioner to recall its termination notice dated 2nd December 2019 and hand over vacant peaceful possession of the property to enable them to

redevelop it. The Petitioner did not do that. Therefore, by a letter dated 28th October 2021, AA Estates, through its Advocates, disputed the termination notice dated 2nd December 2019 and requested the dispute be referred to arbitration. In response, the Petitioner confirmed and reiterated the termination of AA Estates as its developers by letter dated 6th November 2021.

14. After due compliance under Section 79A of the Maharashtra Cooperative Societies Act, 1960 (“MCSA”) and a meeting convened on 7th November 2021, the Petitioner considered various proposals of redevelopment before it and, after due consideration, decided to appoint Tristar Development LLP and (“Tristar”) as its developer. This decision was backed by the irrevocable consents of the members in favour of the appointment of Tristar as a developer. Pertinently, AA Estates failed to obtain any favourable orders against the Petitioner in the arbitration proceedings initiated.

15. Tristar took steps and obtained various permissions/approvals, the list of which is annexed at Exhibit “S” to the Petition. It stated to have expended Rs. 11,80,78,519/—towards the redevelopment of the Petitioner’s building.

16. By an order dated 6th December 2022, after almost two and a half years since 12th June 2020, the NCLT again appointed Resolution Professional (RP) for AA Estates. It is in furtherance to this order of appointment, the RP he has addressed the letters dated 11th April 2023 and 19th August 2023 to Respondents Nos.

2 to 5, i.e., MHADA and its officers calling upon them not to entertain any proposal and approval for redevelopment of the Petitioner's property on the ground that:

- (a) moratorium is effective till the date of completion of CIRP of AA Estates and;
- (b) an AA Estates has purchased premium and FSI for the said property.

17. It is apparent that because of these letters issued by RP, the Respondents are refusing to issue any further permissions for redevelopment to the Petitioner. Thus, this Petition.

18. Mr Sancheti learned Senior Advocate for the Petitioner, submitted that this case is covered by the judgment of our Court in the case of *Manohar M Ghatalia & Ors v State of Maharashtra & Ors*¹ and *Tagore Nagar Shree Ganesh Krupa Cooperative Housing Society Ltd v State of Maharashtra & Ors*.² He submitted that ratio in these cases would apply to the present case as well. This case, too, is on an identical footing with no material distinction pointed out. Thus Mr Sancheti submits that the Petition be made absolute as prayed.

19. Mr Satchit Bhogle, appearing for the RP (Respondent No. 9), has no material to distinguish the facts of the present case from the

1 2023: BHC-OS:15669

2 2024: BHC-OS:4855-DB

cases cited by Mr Sancheti. He thus submitted to the orders of the Court.

20. We heard the Advocates of both parties.

21. The facts are undisputed. Evidently, AA Estates have failed to perform their part of the obligations. The Petitioner's members are still in possession of their respective premises. The DA stands terminated. AA Estates has no order in its favour injunctioning the Petitioner from redeveloping their property in any proceeding.

22. Based on the above-narrated facts, the redevelopment rights of the Petitioner's property do not form a property of AA Estates and, thus, a part of the moratorium process. Moreover, the Expression of Interest annexed at Exhibit "Y" of the Petition issued by RP does not even claim the development rights in the said property to be a part of the assets of AA Estates. Merely calling the Petitioner's property a pending project would not constitute an asset of AA Estates. Thus, we hold that the letters issued by the RP are ex-facie illegal and contrary to the CIRP's records.

23. Furthermore, the failure of one of the members of the Petitioner to obtain relief in Suit No 1987 of 2023 before the Hon'ble City Civil Court at Dindoshi against 'Tristar' will have no bearing on this Petition.

24. We concur with the principles established in *Manohar Ghatalia* (supra) and *Tagore Nagar Shree Ganesh Krupa*

Cooperative Housing Society Ltd (supra), and the decisions of the Coordinate Bench bind us. In these cases, the Court noted that if AA Estates (the developer in those instances) failed to meet its obligations—such as paying transit rent and completing the construction within the specified timeline—there is a complete failure of consideration, and no rights accrue to it. Consequently, no vested rights in the free sale component can be separated from the obligations under the Development Agreement (DA).

25. Additionally, as in the above cases, while AA Estates grinds its way through a CIRP, the result of which may be entirely uncertain and might well result in an order of liquidation rather than a successful resolution plan, these society members cannot be deprived of their basic and fundamental rights to shelter.

26. Because of the aforesaid, we make the Rule absolute in terms of prayer clauses (a), (b) and (c) of the Petition. They read thus:

“a. issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order, direction directing the Respondent Nos. 1 to 6 to grant the Petitioner and/or the Respondent No. 7 the permissions and/approvals which have been requested for and are pending, in accordance with law for redevelopment of the Petitioner Society in furtherance of the Development Agreement dated 10th December 2023 executed with the Respondent No. 7 within such period as the Hon’ble Court deems fit;

b. issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order, directions directing the Respondent no. 1 to 6 to recognize and accept Respondent No. 7 as the Developer appointed by the Petitioner society and disregard / reject any claims / objections raised by Respondent No. 8 and 9 regarding the same;

c. issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order, direction directing the Respondent Nos. 1 to 6 to grant the Petitioner and/or the Respondent No. 7 necessary permissions and / approvals in accordance with law for redevelopment of the Petitioner Society in furtherance of the Development Agreement dated 10th Deceased 2023 executed with the Respondent No. 7 within such period as the Hon'ble Court deems fit."

27. The petitioner's applications for permissions must be disposed of in accordance with the law within two months from today.

28. The Petition is disposed of in these terms. There shall be no order for costs. All persons are to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)