IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4629 OF 2024

Jagdish Madhavdas Mulchandani & Ors. … Petitioners.

V/s.

The State of Maharashtra & Ors. … Respondents.

Mr. G.S. Godbole, Senior Advocate, i/by G.B. Naik for the Petitioners.
Mr. Dipesh Siroya, AGP, for Respondent No.1-State.
Mr. Akshay Shinde for Respondent Nos.2, 3 and 4.
Mr. Shobit Shukla for Respondent No.5.

CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.
DATE : 26th November 2024.

P.C.(Per Kamal Khata, J.).:-

1) Rule. Rule made returnable forthwith. By consent of all the counsel, Petition is disposed of finally at the admission stage.

2) By this Petition, the Petitioners seek a Writ of Certiorari to set aside the letter dated 8th July, 2024 and the Letter of Intent (LOI) dated 10th July, 2024 calling upon the Respondent Nos.5 and 6 (landlords) to redevelop the building Kalyan Bhavan. In addition, this Petition seeks a mandamus directing the Respondent Nos.2 to 4 to grant an LOI to the Petitioners under Section 79A(1)(b), permitting them to undertake the redevelopment of the building Kalyan Bhavan.

Brief facts:

3) The Petitioners are statutory tenants of the building known as Kalyan Bhavan an 80-year-old dilapidated building located at CS No.791,352-358 Kalbadevi Road, Mumbai 400 002 ("Kalyan Bhavan").

3.1) Earlier, Writ Petition No.232 of 2024 filed by the landlords culminated into an Order of this Court dated 14th February, 2024 which read as under:

> *"1) We do not think that there is any surviving controversy in this Petition. The Petitioner is the owner of a structure called Kalyan Bhavan at Kalbadevi. The prayer is for a direction to Maharashtra Housing and Area Development Authority ("MHADA") and the Municipal Corporation of Greater Mumbai ("MCGM") to have it vacated so that it can be pulled down. Respondent Nos.5 and 6 are two tenants/occupants. There may be others. Before us, there is no dispute that the building is not in the best of conditions. We are not required to enter into the controversy of whether it is a C1 category or a category building because, as Mr. Shah for Respondent Nos. 5 and 6 points out, propping work is being carried out and therefore major repairs ae being undertaken.*
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> *2. This necessarily means that the owner must now submit the necessary application to MHADA and follow the process prescribed in law including under recently amended Section 79A of the MHADA Act in regard to a redevelopment proposal. We have recently held in Chandralok People Welfare Association vs State of Maharashtra [2023 BHC:OS 12498: 2023 SCC OnLine*

Bom 2300] that the doing nothing is not an option available to a property owner. There is a time limit within which owner must submit a redevelopment proposal. If not done, tenants or occupants have the option of reconstructing the building (not redeveloping) and adjusting those costs against future rents. This position in law the Petitioner owner will bear in mind going forward.

3. We see no purpose achieved by keeping this petition pending. It is disposed of but with liberty to both sides to adopt appropriate proceedings."

4) Mr. Godbole, learned Senior Counsel representing the Petitioners submits that the MHADA by the impugned letters dated 8th July, 2024 and LOI dated 10th July, 2024 has sought to overreach the order of this Court dated 14th February 2024 extracted hereinabove. Mr. Godbole submitted that as per Section 79A(1)(a) of Maharashtra Housing and Area Development Act 1976 (MHAD Act) the first opportunity is given to the owner or landlord to submit a proposal to redevelop the building alongwith 51% consents of the occupants or tenants of the building within six months of the notice. He submitted that, the landlords failed to take appropriate steps within the stipulated period of six months. Thus, the Petitioners were issued a notice under Section 79A(1)(b) of MHAD Act providing them an opportunity to form a society and redevelop the building.

4.1) Mr Godbole submitted that, the fact that the six months period of the Section 79A(1)(a) notice had lapsed on 17th November 2023 was not informed/communicated to the Court on the date of passing of the Order dated 14th February, 2024. He submitted that the Order did not grant further time to the landlords to redevelop the property and thereby extend the period of limitation envisaged in Section 79A(1) of MHAD Act.

4.2) He submitted that pursuant to the expiry of statutory period of six months on 17th November 2023, the tenants received Notice dated 27th December 2023 from MHADA under Section 79A(1)(b) on 2nd January 2024. Pursuant to the said notice the Petitioners obtained 65% consents from tenants as against 51% required under MHAD Act to redevelop the property.

4.3) Mr Godbole argued that, by reissuing the Notice dated 8th July, 2024 under section 79A(1)(a) of MHAD Act, the MHADA could not afford a fresh opportunity to the landlords to redevelop the building once the statutory period expired on 17th November 2023. Consequently, there was no question of issuing LOI contained in the letter dated 10th July, 2024 to the owners or Landlords. He therefore submitted that the Petition be made absolute as prayed with costs.

5) Mr. Akshay Shinde for Respondent Nos. 2, 3 and 4 submitted that, the letter dated 8th July, 2024 was issued pursuant to the Order dated 14th February, 2024. He submitted that the Order dated 14th February 2024 was understood to have called upon MHADA to give a fresh notice to

landlord for the purposes of redevelopment and thus such notice was issued. He submitted that there was no intention of MHADA to breach the orders of the Court.

6) Mr. Shukla learned counsel for Respondent No.5 contended that even they understood the order dated 14th February 2024 to have granted the owners an opportunity to redevelop the property. Thus, pursuant to the Order the landlords re-communicated their desire to redevelop the property to the tenants as well as held meetings in that regard. He reiterated that the owners are ready to redevelop the property and therefore ought to be given an opportunity to redevelop the building as landlords.

7) In our view, the Reply is untenable. The relevant section 79A(1)(a) and (b) are reproduced herein for ready reference.

> ***"79-A. Procedure of redevelopment in case of dangerous buildings declared by Mumbai Municipal Corporation or competent authority.***
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> *(1) Notwithstanding anything contained in sub-section (3) of section 88 and section 92 of this Act and sections 354 and 499 of the Mumbai Municipal Corporation Act (III of 1888), in case of the building to which the provisions of sucb-section (1) of section 82 applies (hereinafter in this Act referred to as "cessed building"), which is declared dangerous by the Mumbai Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act (III of 1888) or by the competent authority, if the redevelopment of such building is not taken up by the owner or landlord of the cessed building,*

within three months from the date of issue of notice under section 354 of the Mumbai Municipal Corporation Act by the Mumbai Municipal Corporation (III of 1888) or the competent authority, the Board may adopt the following procedure:-

(a) a notice shall be issued to the owner or landlord of the cessed building to submit the proposal for redevelopment within six months from the date of issue of notice. Alongwith the proposal, consent of fifty-one per cent of the occupants or tenants of the said building shall be accompanied;

(b) if the owner or landlord fails to submit the proposal within the period and the manner as provided in clause (a), the proposed co-operative housing society of the occupants or tenants of such building may submit the proposal to the Board, for redevelopment of such building under the relevant provisions of the Development Control and Promotion Regulations-2034 for Greater Mumbai, within six months from the date of communication received from the Board. The proposal shall be accompanied with the consent of at least fifty-one per cent of the occupants or tenants:

***Provided** that, when the building is redeveloped by the proposed co-operative housing society, the compensation to the owner or landlord shall be paid by the concerned co-operative housing society as per the provisions of sub-section (2);*

(c) if the redevelopment is not initiated within the period and manner as provided in clauses (a) and (b), the Board shall reconstruct the building by acquiring such building, without insisting on consent of at least fifty-one per cent of the occupants or tenants of the said building.

(2) When the building is redeveloped under the provisions of clauses (b) and (c) of sub-section (1), the compensation shall be paid to the owner or landlord, at the

rate of twenty-five per cent of the amount of Ready Reckoner Rates, determined under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 of the open land of such building or fifteen per cent of the built-up area of sale component determined as per the Ready Reckoner Rates, whichever is higher.

Explanation. - For the purposes of this sub-section, "sale component" means the built-up area remaining after deducting Rehab Built-up Area from the permissible Built-up Area admissible as per the relevant provisions of the Development Control and Promotion Regulations-2034 for Greater Mumbai.

(3) If the building is redeveloped by the Board under clause (c) of sub-section (1), subject to the provisions of sub-section (2) for payment of compensation, the provisions of sections 92 and 93 shall mutatis mutandis apply, for acquisition of such building. "

8) The Order dated 14th February, 2024 is unambiguous. The Order in no way extends the six month period of limitation permitted 79A(1)(a) of the MHAD Act for the landlord. On the contrary, the second paragraph of the Order dated 14th February, 2024 indicates the rights of the tenants by referring to a recently decided case of *Chandralok People Welfare Association Vs. State of Maharashtr*a reported in 2023 SCC OnLine Bom 2300, by holding that doing nothing is not an option available to property owner and that there is a time limit within which the owner must submit a redevelopment proposal. It reiterates that if the landlord failed to take steps for redevelopment the tenants or occupants would have the

option of reconstructing the building and adjusting the costs against future rents. Thus, the tenants would have a right to reconstruct the building but not redevelop the building. That was not a case of cessed buildings.

9) This is a case of a cessed building where MHAD Act applies. As per the provisions of 79A(1)(b) of MHADA Act, extracted herein above the tenants clearly have a right to redevelop the property under the provision of Development Control and Promotion Regulations 2034.

10) In view of the aforesaid, Petition is made absolute in terms of prayer clauses (a) and (b).

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**