

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4838 OF 2024

Jai Sai Pushpa CHS Ltd.	...Petitioner
Vs	
State of Maharashtra & Ors.	...Respondents

Mr. Abhijit Patil for the Petitioner.
 Ms. R. A. Salunke, AGP for Respondent Nos.1 and 3-State.
 Mr. Dinesh P. Adsule for Respondent No.2.
 Ms. Ashwini B. Jadhav for Respondent No.4.

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**CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.**
DATE: 24 JUNE 2025.

P.C.

1. The Petitioner is a cooperative housing society. Its premises were declared to be dilapidated and the building of the Petitioner-Society was categorised by Respondent No.2 as C-1 Category. In these circumstances, the Petitioner has entered into a Development Agreement so as to redevelop the premises with Respondent No.4-Developer. A copy of the Development Agreement dated 5th May 2022 is annexed to the Petition. Also, the Report of the Structural Engineer which records that the building was dangerous and not in a habitable state is also placed on record. It appears to be clear that there is no dispute on the ruinous condition of the building of the Petitioner-Society and has already been vacated by all the members of the Petitioner-Society except Respondent No.5, who although is not residing, is not willing to remove his belongings. The said approach on the part of Respondent No.5 has caused severe prejudice to the other members of the Petitioner-Society, who are awaiting for a roof over their head. It is the rights guaranteed to the members of Petitioner Society of shelter which forms part of Article 21 of the Constitution of India is being espoused in the present proceeding.

2. Considering such genuine issues as involved, Respondent No.2 which is a Planning Authority has also issued Notice dated 9th January 2023 to Respondent No.5 calling upon him to vacate the premises and hand over the same to the Petitioner-Society as the said premises were not in a habitable condition. It is also not in dispute that there is no water and electricity supply since the year 2023. It appears that Respondent No.5 has private disputes and/or is not willing to cooperate with the Petitioner. However, insofar as the present proceedings are concerned, what is relevant is the approach of Respondent No.5, which is delaying the redevelopment and of his gross non-compliance of the Notice dated 9th January 2023 issued by Respondent No.2 calling upon him to vacate the premises. The Developer is represented by Ms. Ashwini Jadhav, who had also stated that only because of the non-cooperative approach of Respondent No.5, the redevelopment is delayed, which is causing grave prejudice not only to the Developer but also to the other members of the Petitioner-Society. The Developer has made a statement that the Developer is ready and willing to proceed further with the redevelopment.

3. In our opinion considering the fact that the position in law is well settled that a minority member cannot in any manner prejudice the legal rights of the majority members. (See : **Girish Mulchand Mehta & Anr. vs. Mahesh S. Mehta & Anr.**¹, **Kamla Homes and Lifestyle Pvt. Ltd. vs. Pushp Kamal Co-op. Hsg. Society Ltd. & Ors.**² and **Choice Developers vs. Pantnagar Pearl CHS Ltd. & Ors.**³).

4. In the aforesaid circumstances, considering such grievances of the Petitioner, certainly orders would be required to be passed by this Court to further the development. We find from the record that on 8th May 2024 a coordinate Bench of this Court had issued notice to the Respondents. All the other Respondents have represented, however Respondent No.5, despite notice,

1 2010(2) MhLJ 657

2 2019 SCC OnLine Bom 823

3 2022 SCC OnLine Bom 786

is not represented. It appears that Respondent No.5 intends to avoid the proceedings. We have perused the remarks of the Registry which clearly points out that Respondent No.5 has been served by affixing notice by the bailiff. The bailiff has also remarked that the room was found locked and also the building is a old structure and no one resides in the said building. He has also set out that upon inquiry it was confirmed that Respondent No.5 rarely visits the said premises. Hence the notice of the Court was pasted on the door of the tenements/premises of Respondent No.5. It is thus clear to us that Respondent No.5 has some motive to delay the redevelopment, which is causing grave prejudice to the other members.

5. It also appears that Respondent No.2-Municipal Council has simplicitor issued a notice and has failed to discharge its duties to implement the notice in question.

6. In the aforesaid circumstances, we are inclined to pass the following order:

ORDER

- i. Respondent No.5 shall hand over the vacant and peaceful possession of his tenement/premises to the Petitioner-Society or the Developer within a period of one week from today.
- ii. In the event, Respondent No.5 fails to do so, we direct that the Court Receiver, High Court, Bombay shall stand appointed as the Competent Officer, who shall remove the belongings of Respondent No.5 and get the said premises of Respondent No.5 vacated and hand over possession of the same to the Petitioner-Society or the Developer, which be undertaken if within a period of one week Respondent No.5 does not hand over his tenement as directed by us.
- iii. A copy of this order be served on the Court Receiver, High Court, Bombay.

- iv. The Petitioner-Society is directed to deposit an amount of Rs.25,000/- in the office of the Court Receiver as its charges. It is clarified that in the event the Court Receiver is not required to undertake any action, such amount be refunded/returned to the Petitioner-Society.
 - v. Needless to observe that the inventory of articles of Respondent No.5 to remove from the premises in question be prepared and countersigned by the witnesses who would be present, in the event the action of vacating the premises is required to be taken by the Court Receiver, High Court, Mumbai.
 - vi. Further, needless to observe that before the building is demolished, the measurement of Respondent No.5's premises and actual carpet area and any other area exclusively in Respondent No.5's use and occupation shall also be measured and such joint measurement certification be provided to the Petitioner, Respondent No.5 and any developer, who be appointed to undertake redevelopment.
7. Stand over to **8th July 2025 (HOB)**.
8. The necessary report be placed on record either by the Petitioner-Society or the Court Receiver, as the case may be.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)