

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.219 OF 2024

Malad Shantinath Co-operative Housing Society Limited	Applicant
Versus	
Dilip Narayan Joshi	...Respondent

WITH

COMMERCIAL ARBITRATION PETITION NO.456 OF 2024

Malad Shantinath Co-operative Housing Society Limited	Petitioner
Versus	
Ghanshyam Shantilal Soni	...Respondent

WITH

COMMERCIAL ARBITRATION PETITION NO.992 OF 2025

Sahakar Infracon Projects Pvt. Ltd.	Petitioner
Versus	
Malad Shantinath Co-operative Housing Society Limited	...Respondent

WITH

COMMERCIAL ARBITRATION PETITION NO.747 OF 2024

Malad Shantinath Co-operative Housing Society Limited	Petitioner
Versus	
Mahesh Dahyabhai Trivedi	...Respondent

Mr. Karl Tamboly *a/w. Tushar Gujjar, Deep Madnani, Krina Kothari & Ankush Shah i/b. SL Partners, Advocate for Petitioner.*

Mr. Sarosh Bharucha *a/w. Janakraj Vakil & Hetal Vakil, Advocates for Petitioners in CARBPL/992/2025.*

Mr. Sarosh Bharucha *a/w. Janakraj Vakil & Hetal Vakil, Advocates for Respondent Nos.11 & 12 in CARBPL/219/2024.*

Mr. Sarosh Bharucha a/w. *Janakraj Vakil, Hetal Vakil, Advocates for Respondent Nos.3 & 4 in CARBP/747/2024.*

Mr. Sarosh Bharucha a/w. *Janakraj Vakil & Hetal Vakil, Advocates for Respondent Nos.10 & 11 in CARBP/456/2024.*

Mr. Satish J. Agarwal, *Advocate for Respondent Nos.2, 3, 5, 6, 7, 9 & 10 in CARAP/219/2024 (through VC).*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 23, 2025

PC :

1. All these Petitions relate to the same redevelopment project. A developer, namely, Sahakar Infracon Projects Pvt. Ltd. (“**Developer**”) (Petitioner in Commercial Arbitration Petition (L) No.992 of 2025) has been assigned the development rights under the development agreement dated March 27, 2023 (as supplemented from time to time) with the Malad Shantinath Co-operative Housing Society Limited (“**Society**”) (Petitioner in Commercial Arbitration Petition (L) No.219 of 2024).

2. The Society has, in all, 25 members but disputes and differences between the Society and its members had led to three occupants , namely, Flat No.A-12 (belonging to the Trivedi family), Flat No.B-20 (belonging to Joshi family) and Flat No.B-25 (belonging to Soni family) not being committed to vacate to enable the redevelopment of the Society.

3. On the last occasion, on January 15, 2025, Learned Counsel for the Developer had submitted that this Arbitration Petition being Commercial Arbitration Petition (L) No.992 of 2025 had not then been filed and that he was in the process of moving the Petition. Upon hearing the petition filed by the Society, the matter was stood over to today for consideration along with the Developer's petition. Since the issues had been substantially covered on the last occasion, the matter was marked as part-heard.

4. Today, all these Petitions have been taken up collectively. It is seen from the record that repeated attempts to serve the Trivedi family in connection with Flat No.A-12 have been rebuffed with the notice not being accepted. As regards Flat No.B-25, Learned Counsel for the Developer submits that members of Soni family have given an undertaking to vacate their flat along with all other occupants of the building. He tenders a copy of the said undertakings. These undertakings are marked "X" for identification and taken on record. Secondly, Learned Counsel for the Developer submits that he is not pressing for any specific intervention in relation to Flat No.B-25 in view of the commitment made by the Soni family to vacate. However, he requests that should there be any violation of the commitment to vacate, then the same protection as sought for the other two flats be afforded to Flat No. B-25 as well.

5. As regards Flat No.B-20, Learned Counsel for all the members of Joshi family except two, namely, Mr. Dilip Joshi and Mrs. Sudha D. Joshi entered appearance today and submitted that there is no difference of opinion at all amongst the Joshi family and that the Joshi Family would submit a written undertaking to the Developer signed by the constituents of the Joshi family who have been made parties in Commercial Arbitration Petition No.219 of 2024, confirming that they shall vacate their premises no later than February 27, 2025. Such an undertaking made on instructions, is taken on record. However, Learned Counsel for the Joshi family makes it clear that he has no instructions from Mr. Dilip Narayan Joshi and Mrs. Sudha Dilip Joshi who are arrayed as Respondent Nos.1 and 4 in Commercial Arbitration Petition No.219 of 2024. Consequently, any undertaking filed by him would cover all the members of Joshi family except these two. However, it is made clear that should all constituents of the Joshi family not vacate their premises by the scheduled date, namely, February 27, 2025, the Court Receiver shall take possession of Flat No.B-20 from whoever is in occupation of the said flat, and hand over to the same to the Developer. Likewise transit rent payable in connection with that flat by the Developer shall be paid to the Court Receiver, who shall hold the same until the disputes and differences among the Joshi family members reaches resolution. Should all

members of the Joshi family (including the two Joshis not represented by Learned Counsel) indeed file undertakings as promised today, the Developer shall take possession of the flat from the Joshi family collectively on February 27, 2025 and shall pay transit rent to the members of the Joshi family as a unit in accordance with the written instructions from Respondent Nos. 1 and 4 in Petition No.219 of 2024. Such instructions shall be delivered to the Developer prior to February 27, 2025. Should no such instruction be received with a break-up on payment of the transit rent, the Developer shall pay the amounts to the Court Receiver, who shall await instructions from his Court.

6. As regards Flat No.A-12 in view of futile attempts to serve the Trivedi family, the Court Receiver shall take over possession of the Flat No.A-12 on February 27, 2025 at 11:00 am, should the Trivedi family be not willing to vacate the flat occupied by them. The Court Receiver shall hand over the possession of the said flat to the Developer. Likewise the Court Receiver be given possession of the redeveloped flat for the Court Receiver to hand over possession to the occupants from whom the Court Receiver takes possession on February 27, 2025. Consequently, with the aforesaid directions having been issued, Learned Counsel on behalf of the Society undertakes that all other members shall also vacate their premises no later than February 27, 2025.

7. In a nutshell, each of the flats A-12, B-20 and B-25 shall be amenable for forcible possession by the Court Receiver with police protection from the local police station to enable handing over of the premises and secure the interests of all the other members who have committed to vacate. Needless to say, the transit rent and corpus amount payable to the occupants of the three flats shall be in accordance with the commitments of the Developer under the Development Agreement, and the Permanent Alternate Accommodation Agreement shall also be executed with the parties commensurate with what is due.

8. Learned Counsel for both the Developer and the Society confirm that they shall invoke arbitration and constitute the arbitral tribunal, which shall take over this matter under Section 17 of the Act.

9. With the aforesaid directions, these Petitions are ***finally disposed of.***

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]