

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3508 OF 2024

Star Deep Co – Operative Housing Society	]	
Ltd., A Co – Operative Housing Society duly	]	
Registered under the Provisions of Maharashtra	]	
Co – Operative Societies Act, 1960, Though	]	
its Chairman Mr. Ankit Jain, Aged 40 years,	]	
an Adult, Indian Inhabitant, having registered	]	
address at Sodawala Lane, Opp. Prabhodhankar	]	
Thakre Hall, Borivali (West), Mumbai – 400 092.	]	...Petitioner.

V/s.

- | | | | |
|----|---|---|--|
| 1. | Municipal Corporation of Greater Mumbai |] | |
| | A statutory corporation duly constituted |] | |
| | under The Mumbai Municipal Corporation |] | |
| | Act, 1888 having its office at 5, |] | |
| | Mahanagarpalika Marg, Fort, |] | |
| | Mumbai – 400 001. |] | |
| 2. | The Commissioner |] | |
| | Municipal Corporation of Greater Mumbai |] | |
| | being the Chief Executive Officer of |] | |
| | Respondent No. 1, having its office at |] | |
| | Mahanagarpalika Marg, Fort, |] | |
| | Mumbai 400 001. |] | |
| 3. | The Deputy Chief Engineer B.P (W.S.-II) |] | |
| | “C” Wing, 2 nd Floor, Municipal Office |] | |
| | Building Sanskruti Complex, 90 Feet, |] | |
| | Thakur Complex, Kandivali (East), |] | |
| | Mumbai – 400 101. |] | |
| 4. | The Executive Engineer, (Building & Proposal) |] | |
| | W.S. “R” Ward, Municipal Building, “C” Wing, |] | |
| | Sanskriti Complex, 90 Feet D.P Road, |] | |
| | Near St. Lawrence School, Thakur Complex, |] | |
| | Kandivali (East), Mumbai – 400 101. |] | |
| 5. | Sunil K Sonawane |] | |
| | Age Unknown, an Adult, Indian Inhabitant, |] | |

- | | | |
|---|---|-----------------|
| a Law Officer of Municipal Corporation |] | |
| of Greater Mumbai having its office at |] | |
| Mahanagarpalika Road, Fort, |] | |
| Mumbai – 400 001. |] | |
| 6. Blue Star Crystal Co – Operative Housing |] | |
| Society Ltd., A Society duly registered under |] | |
| the provisions of Maharashtra Co-operative |] | |
| Societies Act, 1960 having its registered |] | |
| address at Star Crystal Apartments, O.P |] | |
| No.20 – B, F.P. No.117, |] | |
| TPS-I of Borivali, Sodawala Lane, |] | |
| Borivali (West), Mumbai – 400 092. |] | |
| 7. Sahakar Developers |] | |
| A Partnership Firm Registered under the |] | |
| Indian Partnership Act, 1932, having their |] | |
| Address at Sai Sadan, Roshan Nagar, |] | |
| Chandavarkar Lane, Borivali (West), |] | |
| Mumbai – 400 092. |] | ... Respondents |

Dr. Abhinav Chandrachud a/w. Adv. Diksha Shiroadkar and Adv. Janay Jain
i/by Adv. Sachin Mhatre for the Petitioner.

Mr. G.S. Godbole, Senior Advocate a/w. Adv. S.V. Tondwalkar i/by Adv.
Komal Punjabi for Respondent Nos.1 to 4-BMC.

Mr. Milind Sathe, Senior Advocate a/w. Adv. Viraj Parikh, Adv. Siddharth
Shah i/by Trilegal for Respondent No.6.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 5th May, 2025.

PRONOUNCED ON : 20th June, 2025

Judgment (Per : Kamal Khata, J) :-

1) By this petition under Article 226 of the Constitution of India the
Petitioners - a Co-operative Housing Society seek a writ of certiorari or any
other writ, Order or direction against the Respondents to stay the ongoing

construction/ redevelopment carried out by the Respondent No.6-society. The Petition asserts that, the Respondent No.6-society has usurped and sought the benefit of the entire built up area of the plot and proportionate rights of the Petitioner society to the extent of 766.84 sq. mtrs., i.e., 65.52% of the share in its built up area. The Petition asserts that, while seeking an approval of the amended plan dated 22nd June 2023, no consent/NOC was obtained from the Petitioner-society.

2) Dr. Chandrachud, learned counsel for the Petitioner states that, the Star Construction Corporation, under Articles of Agreement dated 2nd December, 1978 developed a portion of the larger land and constructed Blue Star Crystal building which subsequently was formed into a society known as Blue Star Crystal Co-operative Housing Society (B.S. Crystal). By an indenture of conveyance dated 1st March, 1982 duly registered the Star Construction Corporation transferred the larger land alongwith structures thereupon in favour of B.S. Crystal. Thereafter, by an indenture of lease dated 1st March, 1982 executed between B.S. Crystal and M/s. Star Construction Corporation a portion of the larger land admeasuring 937 sq. mtrs., including setback area taken over by Brihanmumbai Municipal Corporation ('BMC') on the larger land bearing C.T.S. Nos.2434, 2434/1, 2434/1, 2434/3 and 2434/4 alongwith structures standing thereon was leased to them. In furtherance of indenture of lease dated 1st March, 1982 by Articles of Agreement dated 25th December, 2022 executed between

Respondent No.6- B.S. Crystal and Respondent No.7-Sahakar Developers. B.S. Crystal transferred and assigned the right to consume further TDR of 1438 sq. mtrs. and if available, additional TDR of setback area of 90.6 sq. mtrs. for utilization and consumption on the leased land and permitted an additional constitution on the said property by purchase of TDR. The Sahakar Developers- Respondent No.7 constructed the building Star Deep Apartment on the portion of the land comprising of Stilt + 12 upper floors pursuant to the Commencement Certificate (CC) dated 7th June, 2003 approved by the BMC Building Plan dated 15th July, 2004. On 15th July, 2010 the flat purchasers formed they start Co-operative Housing Society.

2.1) He submits that, as set out in Clause 18 of the Agreement dated 25th December, 2002 the Petitioners are entitled to seek conveyance in respect of the Suit premises. He argues that, for the reasons best known to Respondent No.6 and 7 they have failed and neglected to convey the portion of the Suit premises in favour of the Petitioner and hence the property card reflects the name of Respondent No.6. Admittedly, the member of Star Deep are use in occupation of the respective flats since 2010 and are pursuing with the BMC for grant of Occupation Certificate ('OC').

2.2) Based on the report dated 15th December 2021 issued by the BMC Dr. Chandrachud submits that, despite the remarks and observations no NoC has been taken from Star Deep by B.S. Crystal for the

redevelopment of their property. The BMC's remarks and observations in its Order dated 15th December, 2021 are completely given a go by only to unduly favour the B.S. Crystal and thereby permitting them to usurp 766.84 sq. mtrs. i.e. pro rata entitlement of Star Deep on the said land. He thus submitted that, the amendment plan dated 22nd June, 2023 has been illegally approved in favour of B.S. Crystal . He contends that, both the societies are located on a common layout and therefore the consent of Star Deep society was an essential pre condition for the redevelopment of the B.S. Crystal society. In view of the aforesaid, he submits that, the construction of the building has to be immediately stopped and the reliefs sought in the Petition ought to be granted as prayed.

3) Mr. Godbole, learned senior Advocate for the BMC submits that, the writ plot is not subdivided and consists of two buildings i.e. building No.1 and building No.2 namely B.S. Crystal CHSL and Star Deep CHSL respectively. The building No.1 is the owner/lessor of the plot bearing CTS Nos. 2434, 2434/1, 2434/2, 2434/3 and 2434/4 2 of village Eksar, FP No.117 of village Borivali, T.P.S. No.1 and the building No.2 is the lessee i.e. Petitioner herein.

3.1) He relies upon the Affidavit of Shri Sunil H. Rathod, the Chief Engineer (Development Plan) of the BMC to submit that, there is no Floor Space Index ('FSI') imbalance on the plot under reference as per DCR 1967. He submits that, in view of the calculations narrated in the Affidavit, the

redevelopment in terms of the concessions issued by the Municipal Commissioner neither transgresses/denies/encroaches upon any benefits of the occupants of the Star Deep CHSL which is constructed on the leasehold area of 937 sq. mtrs. and nor of any occupants of the front structure existing in the premises. He submits that, the present redevelopment proposal up to the limit of 3779.39 sq. mtrs. is proportionately attributable to the area under the possession and ownership of B.S. Crystal CHSL and is permissible without any violation of any statutory provisions applicable for the redevelopment of B.S. Crystal CHSL. He further submits that, disputes if any with regarding the respective rights of the lessor and lessee are a civil dispute and cannot be decided in a writ jurisdiction under Article 226. He submits that, by virtue of the Notification dated 23rd November, 2007 bearing No.TPB 4397/2411/Pra. Kra. 239/07/Navi-11 it is specifically stated that, in case of plot where there are more than one society and a proposal to develop the remaining portion of the plot is proposed then the Transferable Development Rights ('TDR') is loadable on the plot which belongs to the existing society cannot be utilized on the remaining area of the plot unless consented by the other society. According to him in the present case the FSI sanctioned under the concessions approved is well within the plot potential. Thus, the Notification dated 23rd November, 2007 is not applicable in the present case.

3.2) In view of the above Mr. Godbole submits that, the Petitioner is

not entitled to any reliefs against the Respondent-Corporation and the Petition is liable to be dismissed.

4) Dr. Sathe, learned senior Advocate for the Respondent No.6 submits that, the Petition suffers from gross delay and laches. He submits that, the Petitioner and its members were always aware about the development that were initiated since 31st December, 2021 and more particularly since 20th December, 2022 when the building was demolished for redevelopment. He submits that, the Respondent No.6 is admittedly the owner of the larger property and the BMC being the Planning Authority cannot go into the issue of title in the Writ Petition filed. He submits that, if the Petitioner is claiming preemptory rights over a portion of the larger property or any development rights in the larger property it must establish such rights in a civil Suit and not by way of a Writ Petition. He submits that, the Petition suffers from misjoinder of parties namely Paradigm Blue Star LLP in whose favour the development rights have been granted by the Respondent No.6 under the Development Agreement dated 22nd August, 2022. He submits that, the Petitioner has no development rights in the larger property or any portion thereof and the Respondent No.7 is only a lessee of plot A and has no ownership rights over any other part. He relies on the explanation in the Affidavit of Shri Kirit Mehta dated 30th January, 2025 to submit that the redevelopment of the building has considered and accounted for the FSI arising from plot B and there is absolutely no attempt

to assert or take over the FSI arising on plot A. He submits that, the claim to entitlement of 65.52% of the increase in FSI on account of enactment of DCPR 2034 is entirely baseless and misconceived in law. He relies on clause 5 of the indenture of lease dated 1st March 1982 to submit that, the Petitioner is bound by the terms of the indenture of lease and cannot under any circumstances claim any higher right than as provided in this document. He submits that, no principle of provision of law provides for pro rata distribution of FSI on the basis of proportionate built up area under Maharashtra Ownership Flat Act, 1963 ('MoFA Act'). MoFA only contemplates transfer of rights as per the Agreement between the parties and for which one would have to read clause No.5 of the indenture of lease. He submits that, even otherwise when TDR is utilized for construction of a building in a layout, pro rata distribution based on built up area is not applicable at all. Admittedly out of the total built up area of 3168.93 sq. mtrs. of building No.2 admeasuring 2242.6 sq. mtrs is by way of TDR.

In view of the afore stated facts he submits that, the Petition deserves to be dismissed.

5) We have heard counsel for both the societies as well as for the BMC and perused the entire record before us. In our view, in view of the clarification given by the BMC clearly stating that, the redevelopment of B.S. Crystal is in accordance with law and as permissible under the various provisions of DCPR 2034 and it also does not impinge on the entitlements

of the Star Deep society the Petition deserves to be disposed off on that ground alone. Besides, the above the Petitioner admittedly is lessees of the land as more particularly stated in paragraph No.8 of the Petition. The interpretation of clause 5 of the indenture of lease dated 1st March 1982 and the disputes, if any with regard to the calculations submitted by the BMC in its reply can only be decided by examination of documents and parties by a Court exercising civil jurisdiction. Even the issue that would arise consequentially as to whether the B.S. Crystal was hired required to seek the permission of Star Deep for reconstruction and redevelopment on their portion of the land is a matter that would be only decided by a civil Court and not under Article 226 of the Constitution of India by a Writ Court.

6) In our view, the issues in this Writ Petition are purely property disputes between the lessor and the lessee and thus cannot be entertained by the High Court in its writ jurisdiction as held by the Supreme Court in the case of *Shalini Shyam Shetty & Anr. v/s. Rajendra Shankar Patil* reported in (2010) 8 SCC 239.

6.1) In light of the above, the Petition is dismissed with no orders as to costs.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)