

**Vidya Amin**

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

**ARBITRATION PETITION (L) NO. 7966 OF 2022**

Choice Developers .. **Petitioner**  
Vs.  
Pantnagar Pearl CHS Ltd. & Ors. .. **Respondents**

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Mr. Rajiv Singh a/w. Omprakash Jha, Basu, Gaurav i/b. The Law Point  
for the petitioner.  
Mr. Siddharth a/w. Garima Mehrotra for respondent no. 1-Society.  
Mr. A.M. Saraogi for respondent nos. 2 and 4.  
Mr. S.L. Mhatre for respondent no. 3.

**CORAM : G.S.KULKARNI, J.**

**DATE : 13 April, 2022**

**ORAL ORDER:**

**1.** A redevelopment of a 50 year old dilapidated building of Respondent No.1 Co-operative Housing Society (for short “**the Society**”) and the obstruction for such redevelopment by respondent no. 2 to 4 concerning their four units is the subject matter of the present proceedings, filed under section 9 of the Arbitration and Conciliation Act 1996.

**2.** There are 30 members in the Society, out of which, 26 members have already vacated. Respondent no. 2 is a member of the society qua

unit no. 1142; respondent no. 3 is also a member who occupies unit no. 1143 and respondent no. 4, in the circumstances as would be a discussed, would now become member qua units no. 1141 and 1150.

**3.** The Society, considering the dangerous condition of the building, in its General Body Meeting held on 29 November, 2019 had taken up the issue of the urgent need for the redevelopment of the building. The Society thereafter took steps to find out a suitable developer. An 'Annual General Meeting' was convened on 29 November, 2020 wherein by majority of the members it was resolved to appoint petitioner as the developer. Such resolution dated 29 November 2020, of the Society is placed on record as Exhibit B. The relevant extract of the resolution reads thus:

**"08. To select the Developer from the available quotations.**

The Chairman read out the agenda and accordingly placed all the 5 offers received from various Developers / Builders before the General Body. The names of Developers / Builders who have submitted their respective offers are as follows -

- (1) H S Realtors, (2) Choice Developers, (3) Aum Realty  
(4) Alag Property, (5) Saptarshi Group

All the aspects of all the 5 offers received from various Developers / Builders were studied in detail and an in depth analysis was done by all the present members. All the offers have been considered minutely on merits of their respective offers and their financial standing, credibility, expertise, goodwill in the construction industry, past projects executed, delivery time line with quality of work, technical expertise and so on. As per the offers submitted by the various Developers / Builders it was clear that none of the Developers / Builders are interested in constructing Residential cum Commercial building. **All the present Members concluded with majority to construct only Residential Building.** At this juncture objection was raised by Mr. Nirmal Kothari

(Representative of Room No. 1142) and Mr. Mahendra Jain, representative of Sanmati Mandal (Room Nos.1141 and 1150). Both the representatives raised objections stating that they want commercial premises only without which they will not support the Resolution and also not allow the Redevelopment of the building property to materialise into reality. Mr. Mahendra Jain insisted that they should get a Temple only in the Society's property without which they will not support any resolution and withhold Redevelopment process. Mr. Rohit Gandhi informed the General Body that if any member is provided with Commercial premises, he should also get commercial premises since he is a Doctor and is practicing in his Room No.1145 since last many years. The discussion lasted for about 60 Minutes. All the positive and negative aspects as well as pros and cons of all the developers / builders were considered before achieving at a common agreed decision. After lengthy, thorough and due deliberations it was ultimately and finally decided that from amongst all the available offers, the offer of Choice Developers, 1402, Bhuriraj Costarica, Plot Nos. 1 & 2, Sector – 18, near Moraj Circle, Sanpada, Navi Mumbai – 400 705 which is best on its merits, and in the best interest of the Society and all its members, be hereby accepted. After considering all the aspects the Chairman asked the general body that someone should propose 1 of the Developers / Builders from the above list to redevelop the Society's existing building property situated at Building No.39, Pantnagar Pearl C H S Ltd., C.T.S. No.5661 (Pt), Pant Nagar, Ghatkopar (East), Mumbai – 400 075. The General Body was of the opinion that the project should be awarded to Choice Developers, 1402, Bhuriraj Costarica, Plot No.1 & 2, Sector – 18, near Moraj Circle, Sanpada, Navi Mumbai – 400 705 as the Developer of the Society's Building Property. **As mentioned hereinabove the Resolution to appoint any Developer was objected by (1) Mr. Nirmal Kothari (Representative of Room No.1142 and (2) Mr. Mahendra Jain, representative of Sanmati Mandal (Room Nos.1141 and 1150) with the sole object that they want commercial premises in lieu of their existing residential premises, it was suggested and requested by rest of the members and authorised the Managing Committee Members to initiate the procedure at the earliest and finalise everything.”**

(emphasis supplied)

4. Thereafter on 7 February, 2021, a further Annual General Meeting of the Society was held in the presence of the officers of Maharashtra Housing Area Development Authority (for short “MHADA”), which was attended by 22 members. In such meeting, a

decision as taken to appoint the petitioner as a developer to undertake the redevelopment of the Society's premises, was confirmed. On 11 February, 2021, the Deputy Registrar of Cooperative Society also granted a NOC for redevelopment of the society's premises (Building no. 39).

5. The above initiatives of the Society culminated into a "Development Agreement" dated 23 March, 2021, being executed between the petitioner and the Society. Being appointed as a developer the petitioner, has taken steps so that the redevelopment work can commence. The petitioner made appropriate applications to the MHADA and the Municipal Corporation. Building plans for the proposed construction were submitted. On 9 July, 2021, an "Intimation of Approval" was issued in favour of the petitioner as also the same was communicated to the Society.

6. On 10 July, 2021, the petitioner issued a notice requesting the members that an intimation of approval was received by the petitioner within the agreed time and as agreed by the society with the petitioner in Clause 10 of the Development Agreement, the members were called upon to handover the vacant and peaceful possession of their respective tenements/units, within 30 days so that the land and building is

handed over to the petitioner for the purpose of demolition and construction of new building. The said notice reads thus:

“Dated : 10<sup>th</sup> July, 2021

To,

PANTNAGAR PEARL CO-OPERATIVE HOUSING SOCIETY LIMITED,  
Building No. 39, Pant Nagar, Ghatkopar (East), Mumbai 400 075.

Ref: Demand for vacant possession as per registered Development Agreement dated 23<sup>rd</sup> March, 2021.

Sirs,

Kindly refer to the registered Development Agreement dated 23<sup>rd</sup> March, 2021 entered into between us.

We are glad to inform you that we have, with much efforts even during this pandemic time, been able to obtain the Intimation of Approval (IOA) from MHADA within the agreed time. A copy of the IOA dated 9<sup>th</sup> July, 2021 is attached herewith for your perusal.

As per clause No.10 of the registered Development Agreement, the Society and all the members are called upon to hand over vacant and peaceful possession of the property i.e. land and building within thirty days for demolition of existing and construction of new building.

You are requested to draw the attention of all the non-co-operating members of clause 12 of the registered Development Agreement that if they fail to hand over possession within the agreed period of thirty days then they shall be liable for the penalty as stated in clause 12.

Kindly hand over possession as agreed. We are ready with payments to be made against vacant and peaceful possession of the property and we are also ready for further development process. Kindly do not delay.

Yours truly,

For, Choice Developers

sd/-

Partner.”

7. In pursuance of the above notice of the petitioner, 26 members have already vacated their respective units. Respondent nos. 2, 3 and 4

are not vacating and/or are obstructing the redevelopment. They are causing hurdles and impediment to the redevelopment work which according to the petitioner and the society is causing a serious prejudice to the members who have already vacated and who are eagerly awaiting the redevelopment work to commence. It is more nine months that the society is made to suffer by these respondents. As contended by the petitioner such obstruction would also disturb the timelines for completion of the redevelopment work and would also adversely affect the cost of the project.

8. Mr. Singh, learned counsel for the petitioner would urge that it is a settled principle of law that minority members of a society cannot take a position that they would oppose the majority will of the members, to undertake redevelopment of the dilapidated building, in not extending their cooperation in the redevelopment process, by not vacating their respective units and cause a prejudice the redevelopment. It is also his contention that whatever rights respondent nos. 2, 3 and 4 intend to assert qua their respective flats/units, it is for these respondents to take up the issue against the Society in a manner as known to law, and that these respondents cannot take an adamant position of causing obstructions in the

redevelopment being undertaken by the petitioner under the Development Agreement in question. It is submitted that the IOA was granted in July, 2021 that is about nine months back, and except respondent nos. 2, 3 and 4, all other members having vacated. It is thus necessary that these obstructing respondents vacate their units.

9. Mr. Singh has submitted that respondent no. 2 had approached the City Civil Court at Bombay in S.C. Suit No. 1008 of 2021 challenging the decision of the Society to undertake the redevelopment in question. The principal contention of respondent no. 2 to oppose the redevelopment was on the ground that respondent no.2's unit needs to be redeveloped as a commercial unit and not as a residential unit. In such suit, respondent no. 2 filed Notice of Motion No. 1113 of 2021 praying for a relief of temporary injunction, that the Society as also the petitioner be restrained from taking any further steps on the redevelopment of the premises of the Society and restrain them from disturbing the possession of respondent no. 2, except by following due process of law. The learned Judge of the City Civil Court by an order dated 24 August, 2021 passed on such Notice of Motion granted a temporary injunction restraining the society and the petitioner in taking any further steps qua the redevelopment of the society's building and from disturbing respondent no. 2's possession.

10. The said interim order passed by the City Civil Court in respondent no's 2 suit was challenged by the Society before this Court in an Appeal from Order (No. 241 of 2021). By an order dated 20 October, 2021 passed by a learned Single Judge of this Court, while admitting the said appeal, the Court stayed the interim order passed by the City Civil Court granting temporary injunction, in favour of respondent no. 2. In such order the learned Single Judge observed that the record indicated that till date the Society had not granted permission to respondent no. 2 to use the residential premises for commercial purpose. The following are the observations of this Court:

“4. Perusal of said affidavit dated 23 September, 2021 would indicate that, except making such a categorical averment on oath, all other submissions have been made in affidavit.

**Learned counsel for the respondent tried to point out various documents which are in the nature of contemporaneous evidence to contend that the Appellant-Society has in fact permitted the respondent to use her premises for commercial purpose.**

**The record indicates that, till date the Appellant-Society has not granted permission to the respondent to use residential premises for commercial purpose.**

5. **As noted earlier, for want of specific permission from the appellant-society to the respondent to permit her to use the suit premises for commercial purpose, her said contention cannot be accepted.”**

(emphasis supplied)

11. It is informed by Mr. Saraogi, learned counsel for respondent no.

2 that the above order passed by this Court is challenged by respondent no. 2 in an SLP before the Supreme Court. It stated that the SLP is pending adjudication, and there are no interim orders passed on the SLP. Mr. Singh would submit that the position qua respondent no 2 is thus clear that respondent no.2 needs to vacate her unit and make way for the redevelopment.

12. Insofar as respondent no. 3 is concerned, Mr. Singh has pointed out that respondent no. 3 has also filed a S.C. Suit No. 1887 of 2021 before the City Civil Court. The contention of respondent no. 3 was not different from that of respondent no.2, namely that in the redevelopment her unit also be categorized as a commercial unit. She filed Notice of Motion No. 2776 of 2021 in her suit praying for similar interim reliefs. The City Civil Court, by a reasoned order dated 20 December, 2021, rejected the prayer for interim reliefs. It is informed by learned counsel for respondent no. 3 that an Appeal from Order has been filed, however, no orders against the society or the petitioners are passed in the appeal. Mr. Singh would hence submit that that respondent no 3 also needs to vacate her unit, having failed in the notice of motion.

13. Insofar as respondent no. 4 is concerned, Mr. Singh, learned

counsel for the petitioner has stated that respondent no. 4 has filed two suits before the City Civil Court, being S.C. Suit Nos. 74 of 2022 and 75 of 2022 qua its two units. Respondent no. 4 has claimed itself to be purchaser of the units from respondent nos. 5 and 6 under registered agreements. The contention of this respondent in the suits filed by it, is also similar to that of respondent no 2 and 3, namely that the two units of respondent no 4 be regarded as commercial units for the purpose of redevelopment. Also, there was a dispute between respondent no. 4 and the society on membership of respondent no. 4 and the share certificate to be endorsed by the society accepting respondent no 4 as a member qua its units. The Society had refused to accept respondent no. 4 as its member, in pursuance of which respondent no. 4 had filed proceedings before the Deputy Registrar of Cooperative Societies. It is informed by Mr. Saraogi, learned counsel for respondent no. 4 that by an order dated 7 March, 2022 passed by the Deputy Registrar, the Society has been directed to accept respondent no. 4 as a member and also make appropriate entries in the share certificate in favour of respondent no. 4. Learned counsel for respondent no. 1-Society would submit that in view of such order passed by the Deputy Registrar of Cooperative Societies, within four weeks from today, necessary entries in the share certificate qua Flat/Unit Nos. 1141 and 1150 would be

made in favour of respondent no. 4, and accordingly a share certificate would be issued to respondent no. 4.

14. Insofar as the suit filed by respondent no. 4 is concerned, although Notice of Motion(s) for interim relief has been filed, so far no reliefs have been granted in such suits. The prayers in both the suits are stated to be similar. The prayer of respondent no 4 in one of the such suit is required to be noted, which reads thus:

“a) that it be declared that the defendants have no right to disturb the possession of the plaintiffs in respect of the premises being the premises situated at 39/1150, Pant Nagar, Veer Savarkar Chowk, Ghatkopar (E), Mumbai – 400 075 and/or cause any obstruction in the ingress and egress of the said premises for the purpose of the alleged redevelopment until a proper arrangement is being made with the plaintiffs for grant of permanent alternate accommodation and other benefits as suitable for the profession of the plaintiffs and on such terms as this Hon’ble Court may deem fit and proper.

b) that this Hon’ble Court be pleased to issue a permanent order and injunction restraining the defendants, their agents, servants and/or any other person or persons claiming through or under them from in any manner disturbing the possession of the plaintiffs and/or causing any obstruction in the ingress and egress to the premises of the plaintiffs and more particularly, the premises situated at 29/1150, Pant Nagar, Veer Savarkar Chowk, Ghatkopar (E), Mumbai – 400 075 unless an appropriate agreement is signed for getting the permanent alternate accommodation and other benefits attached to the said premises and on such terms as this Hon’ble Court may deem fit and proper.”

15. Mr. Singh, in the above circumstances, would submit that today the position is that none of these obstructing respondents have any orders in their favour passed in their suits, which would prevent the

petitioner and Society calling upon respondent no. 2 to 4 to vacate their units. It is hence his submission that considering the settled position in law that these minority members ought not to obstruct the petitioner undertaking the redevelopment under the Development Agreement, appropriate orders as prayed for in this petition be granted. It is submitted that the obstructing respondents not vacating their units are issues falling under the development agreement as entered between the petitioner and the Society under which in clause 10 there exists an obligation on all members of the society to vacate their units and enable the re-development. The petitioner has accordingly prayed for the following reliefs:

“9.9 The petitioner, therefore, prays that pending the invocation, commencement and conclusion of arbitration, this Hon’ble Court be pleased to exercise the powers vested in it under Section 9 of the Arbitration and Conciliation Act, 1996 and make such orders as this Hon’ble Court deems appropriate -

- a) Directing respondent nos. 2 to 4 to forthwith handover the vacant possession of the premises in their occupation, i.e., (i) Unit No. 1142; (ii) Unit No. 1143; and (iii) Unit No. 1141 and 1150 in Building no. 39 constructed on the parcel of land admeasuring 849.74 sq. mtrs. or thereabouts situated at Survey No. 236-A, C.T.S. No. 5661 (Part) of village Ghatkopar-Kirol, Taluka Kurla, Mumbai Suburban District;
- b) In alternative to prayer clause (a), appointing a Court Receiver of this Hon’ble Court or any other fit and proper person as a Court Receiver with respect to (i) Unit No. 1142; (ii) Unit No. 1143; and (iii) Unit No. 1141 and 1150 in Building no. 39 with all powers under Order XLI Rule 1 of the Code of Civil Procedure, 1908, including the power to take physical possession of said premises, if necessary by breaking

locks and taking police protection and handover the vacant and peaceful possession of the said flats to the petitioner to enable the petitioner to demolish the building.

c) By an order of injunction, restraining respondent nos. 2 to 4 from dealing with, transferring, encumbering and/or creating any third party rights of any nature whatsoever with respect to (i) Unit No. 1142; (ii) Unit No. 1143; and (iii) Unit No. 1141 and 1150 in Building no. 39 in any manner whatsoever.”

16. Mr. Saraogi, learned counsel is representing respondent nos. 2 and 4. has limited contentions to oppose the present proceedings. The first contention is to the effect that respondent no. 4 so far has not been admitted as a member of the society and unless actual share certificate is issued in favour of respondent no 4, in compliance of the order dated 7 March, 2022 passed by the Deputy Registrar, respondent no. 4 would not fall under the purview of Development Agreement hence no relief can be granted to the petitioner qua respondent no 4. Mr. Saraogi's next contention is that the Society has already taken recourse to proceedings under section 95A of the MHADA Act to evict respondent no 4 and in such proceedings, a notice has also been issued against respondent no. 4 by the MHADA on 29 January, 2022 directing respondent no. 4 to show cause as to why no action against respondent no. 4 be initiated to vacate the units occupied by respondent no. 4, so as to handover the peaceful possession of the said flats/units to the developer. It is Mr. Saraogi's contention that the said notice has been

challenged by respondent no. 4 before this Court in Writ Petition (L) No. 3394 of 2022 which is pending. Mr. Saraogi however states that no orders are passed on such Writ Petition as MHADA was not taking any immediate action of eviction of respondent no.4. It appears from the said Writ Petition, copy of which is tendered across the bar, that although show cause notice dated 29 January, 2022 was issued and respondent no. 4 had responded to the show cause notice by its advocate's reply dated 2 February, 2022, respondent no. 4's reply was subject matter of consideration before the MHADA, at which stage it appears that the Writ Petition was filed by respondent No.4, before a final decision could be taken by the MHADA.

17. In regard to respondent no. 2 Mr. Saraogi would submit that the proceedings are pending before the Supreme Court. He would however fairly submit that there is no injunction as against the society or the petitioner restraining them from seeking the reliefs as prayed for. Mr. Saraogi has reiterated the contentions of respondent no. 2 and 4 in the suit that the units of these respondents being used for commercial purposes till the issues are resolved these respondents ought not to be called upon to vacate their units.

18. Thus, the contentions of respondent nos. 2 and 4 as canvassed by Mr. Saraogi appears to be that respondent nos. 2 and 4 have an entitlement to use the premises as commercial premises and not residential for which respondent nos. 2 and 4 have espoused their remedy by approaching the City Civil Court to seek appropriate reliefs. This appears to be the primary grievance of respondent nos. 2 and 4 and subject matter of dispute between the Society and respondent nos. 2 and 4.

19. Mr. Singh pointing out the resolution as passed by the Society on 29 November, 2020 has drawn the Court's attention to the contents of the resolution wherein the case of these respondents to consider their units as commercial premises was held to be not acceptable to the society. It is his submission that intention of these obstructing respondents cannot be to withhold the redevelopment on the ground that the units held by them are yet to be recognized as commercial units that too in the absence of any material that the units of these respondents were permitted to be converted into commercial units, as also the Society has passed a resolution to have only residential redevelopment. Mr. Singh would, therefore, submit that once there is nothing on record to show that the flats/units which are held by

respondent nos. 2, 3 and 4 were permitted to be converted as commercial premises, mere assertion to that effect, on the part of such respondents would in no manner assist these respondents to withhold the flats/units and not vacate causing hurdles to the petitioner in proceeding with the redevelopment.

20. Having heard learned counsel for the parties and having perused the pleadings of the parties as placed on record, in my opinion, it appears to be an admitted position that the Society has entered into Development Agreement with the petitioner on 23 March, 2021. The development agreement has an arbitration agreement as contained in clause 38. In pursuance of the Development Agreement, the petitioner has taken steps to submit plans and obtain an intimation of approval . Further, NOC was also issued in favour of the petitioner/society to carry out redevelopment of the old building, which is more than 50 years old. It is also not in dispute that 26 members, out of 30 members, have vacated their respective flats/tenements. The four units, i.e., one unit occupied by respondent no. 2, one by respondent no. 3 and two units of respondent no. 4 have not been vacated. They are causing obstruction in the redevelopment work.

21. From the contentions as urged by Mr. Saraogi, learned counsel on behalf of respondent nos. 2 and 4, it clearly appears that insofar as the grievance of respondent no. 4 is concerned, that respondent no 4 is yet to be admitted as a member, in my opinion, stands resolved inasmuch as now the Deputy Registrar has passed an order on 7 March, 2022 directing the Society to accept respondent no. 4 as member qua flat no. 1141 and 1150, and further as a fair stand on behalf of the Society has been taken that appropriate endorsement on the share certificate shall be made to incorporate respondent No.4's name within a period of four weeks from today. Such statement as made on behalf of the Society stands accepted. Thus, the position which emerges is that respondent no. 4 would now be considered as a member of the Society. Once such issue which was the major plank of Mr. Saraogi's submission stands resolved, the only other contention which remains is that the units as held by respondent no. 4 being asserted to be commercial units. Similar is the contention of respondent no 2 and 3 Admittedly all these issues are subject matter of pending suits initiated both by respondent nos. 2 and 4. Respondent no. 2 was granted a temporary injunction by the Suit Court, which came to be stayed by this Court as noted above. As also respondent no. 4 has filed a suit which is pending and no interim orders are obtained so far. Similar is the position in

respect of respondent no. 3 that an application for interim relief is made, in a suit filed by respondent no. 3 before the City Civil Court and Notice of Motion filed for temporary injunction came to be rejected by order dated 20 December, 2021 as noted above.

22. Thus, clearly as on date, there are no orders passed by the City Civil Court or even this Court in the proceedings of the Appeal from Order filed under Order 43 Rule 1, which can be said to prevent the Society from calling upon respondent No.2 to 4 to vacate their respective units. Also the petitioner in his capacity of the developer is not prevented from asserting the prayers as made in the present petition.

23. At this juncture, it would be appropriate to note the settled position in law that the minority members cannot act against the will of the of the majority members of the society and obstruct the redevelopment.

24. A division Bench of this Court in the case of **Girish Mulchand Mehta & Anr. vs. Mahesh S. Mehta**<sup>1</sup>, has held that the jurisdiction under section 9 of the Arbitration and Conciliation Act can be invoked

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1 2010(2) Mh. L.J.

only by a party to the Arbitration Agreement, however, Section 9 does not limit the jurisdiction of the Court to pass an order of interim measures not only against party to an arbitration agreement or arbitration proceedings, but Court is free to exercise same power for making appropriate order against a third party impleaded in a petition filed under section 9 of the Act. It was held that the fact that the order would affect the person who is not party to the arbitration agreement or arbitration proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject-matter of the Arbitration Agreement. The Division Bench has also held, it be a well established position in law that once a person becomes a member of a co-operative society, he loses his individuality qua the society, and he has no independent rights except those given to him by the statute and bye - laws. It is held that a member must act and speak through the society or rather the society alone can act and speak for him qua rights or duties of the society as a body. It was observed that so long as the resolutions passed by the general body of the society are in force and are not overturned by a forum of competent jurisdiction, such decisions of the general body would bind the members, who cannot take a stand-alone position, but are bound by the majority decisions of the general

body. It was also held that the rights of the members qua their flats in their possession would be subservient to the authority of the general body of the society. Thus, in the present case the right to occupy their respective units by respondent Nos.2 to 4 is associated with their membership of the society and hence, the position contrary to the general body resolution of the society cannot be taken by respondent Nos.2, 3 and 4, so as to refuse to vacate their units and create obstruction for redevelopment. The right of the society to redevelop the building/premises of the society in no manner can be scuttled by respondent Nos.2, 3 and 4 who are miniscule minority more particularly once a conscious decision has been taken by the society to redevelop the old dilapidated building.

**25.** In **M/s.Calvin Properties and Housing Vs. Green Fields Co-operative Housing Society Ltd.**<sup>2</sup> in a similar situation as in the present case the Court held that once more than 3/4th majority of the society have passed a resolution to get the existing building demolished and to get the same redeveloped by appointment of a developer, the respondents who were minority members occupying three flats and few garages could not be permitted to obstruct the society or majority

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<sup>2</sup> (2013 SCC OnLine Bom 1455)

members from implementing the project of redevelopment. The Court observed that such minority members cannot be allowed to act contrary to the resolution passed by the general body of the society and are bound to follow the resolution. It was held that the respondents-obstructing members were liable to vacate their respective premises, as by their obstructive approach and non co-operation, the entire project was being held up causing delay to the redevelopment work.

26. A similar view has been taken by a learned Single Judge of this Court in **Chirag Infra Projects Pvt. Ltd. Vs. Vijay Jwala Coop. Hsg.Soc.Ltd. & Anr.**<sup>3</sup>, wherein the Court begins the judgment with a remark, “a usual story of solitary member of a society obstructing the redevelopment of the society”, being the issue. The Court observed that it did not matter to such member that the building was in dilapidated condition and unfit for inhabitation, when obstructing the redevelopment. The Court referring to the decision in **Girish Mulchand Mehta & Anr. Vs. Mahesh S. Mehta & Anr.**<sup>4</sup> as also the judgment of this Court in **Kamla Homes and Lifestyle Pvt.Ltd. Vs. Pushp Kamal Co-op. Hsg.Society Ltd. & Ors.**<sup>5</sup>, held that such minority members cannot obstruct the process of redevelopment. A similar view has been taken

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3 2021 SCC OnLine Bom 364

4 2010(2) Mh.L.J. 657

5 2019 SCC OnLine Bom 823

in **Westin Sankalp Developers Vs. Ajay Sikandar Rana & Ors.**<sup>6</sup> as also in **Sarthak Developers Vs. Bank of India Amrut Tara Staff Co-op. Hsg. Society Ltd. & Ors.**<sup>7</sup>

27. Adveting to the above well settled position in law, respondent nos. 2 to 4 cannot take a position opposing the redevelopment, which is for the beneficial interest of all the members of the society. They cannot cause a suffering to the other members who have already vacated. They also cannot foist a delay on the petitioner and the Society in commencement of the redevelopment work resulting in the project costs being increased every passing day which would be immensely prejudicial to the petitioner as also the society. Respondent no 2 to 4 appear to be carrying an approach that as their residential units in the redevelopment are certainly secured, however the situation of the building going for redevelopment can be exploited to coerce the society and the petitioner for something, which prima facie appears to be, is beyond their normal entitlement. Such an approach is deleterious and detrimental to the majority members of the Society. If at all, any member of a society has different rights than the other common rights, in that event it becomes a dispute between the such member and the

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6 2021 SCC OnLine Bom 421

7 2012 SCC OnLine Bom 525.

Society which would be required to be redressed in a manner known to law before the appropriate forum. However, it cannot be conceived that till such rights of any such individual member are adjudicated the redevelopment at the sufferance of the majority of the members should wait. If this be the case redevelopment will never see the light of the day, apart from the fact it will completely defeat the mandate of the majority members. The redevelopment needs to proceed in a manner as agreed between the Society and the Developer and as per the sanction/ approval of the majority members. It is often seen that the members of the society, rake up issues only when the redevelopment is conceived. All such individual issues as in the present case for any conversion from residential to commercial, which otherwise could have been taken up during the normal times are sought to be asserted when respondent no 2 to 4 were called upon to vacate their units. Such individual assertion would certainly cause hurdles in the smooth implementation of the redevelopment. It also cannot be conceived that a developer who has been appointed by the Society and who is eager to proceed with the redevelopment, is in some manner is left baffled and dragged into litigation. This a one such case wherein the petitioner and the Society are dragged into litigation by respondent no. 4 in two suits filed before the City Civil Court, and in a writ petition filed before this

Court. Further respondent no. 2 also has filed a suit against the society before the City Civil Court. Then there were proceedings of an appeal before this Court arising from the orders of the City Civil Court and thereafter now the proceedings are pending before the Supreme Court. Respondent no 3 has also filed a such suit. In this entire process almost a period of nine valuable months is lost, as the redevelopment has been delayed, when painfully twenty six members have abided the general body resolution and have vacated their respective units. In my opinion it is high time that the members realise that while they raise their grievances, such grievances are really genuine and not of a nature which would unwarrantedly obstruct and delay the proposed redevelopment. Also there needs to be a safeguard against unscrupulous persons who raise frivolous grievances. If such obstructing persons/members fail in proceedings, they would be accountable to the Society for the delay they are causing by such obstructive approach, based on the principle that once a person becomes a member he loses his individuality and has no independent rights except those given to him by the statute and the bye-laws. In an extreme case in which the Society and its majority members have severely suffered at the hands of a miniscule minority members of the Society, in such event, in my opinion it would be necessary for such

members to bear in mind that they are accountable to the Society in a manner known to law.

28. Thus, in so far as the contention of respondent Nos.2, 3 and 4 that their units be categorized as commercial units, is concerned, it is purely a dispute between those members and the society which needs to be taken by respondent Nos.2 to 4 before appropriate forum. In any event, such a dispute in no manner can withhold the redevelopment and more particularly, when there is no prima facie material to show that the units occupied by respondent Nos.2 to 4 were at any point of time permitted to be converted into a commercial units, and for which a procedure in accordance with law is required to be followed, failing which the user of residential premises into commercial premises is necessarily not as per law and/or illegal.

29. Respondent nos. 2, 3 and 4 have already adopted legal proceedings against the Society and the petitioner/developer. It is open for them to assert their contentions in the manner known to law in such pending proceedings, however in the fact situation they cannot impede the redevelopment by refusing to vacate. This however would be certainly subject to any orders which may be passed in any pending

proceedings.

30. Mr. Saraogi's contention that the petition is not maintainable qua respondent no. 4 also cannot be accepted on the ground that respondent no 4 is yet to be issued a formal share certificate. The Society having taken a fair stand that a share certificate would now be issued in favour of respondent no 4, in my opinion as the Society accepts that respondent no. 4 is being made a member qua the units purchased by it, such contention that the petition is not maintainable against respondent no 4 cannot be accepted and would be required to be rejected. In any event, the Court has powers to pass orders against a third party and even assuming that respondent not 4 was not to be accepted as a member, the Court would have jurisdiction to direct respondent no 4 to vacate its units, as respondent No.4 is occupying premises of the society and subject matter of the redevelopment. {**See Girish Mulchand Mehta versus Mahesh S.Mehta** (supra)}

31. In view of the above discussion, respondent Nos.2, 3 and 4 can have no right to delay, defeat and prejudice the redevelopment by not vacating their respective units. The petitioner has made out a strong prima facie case. The balance of convenience is also overwhelmingly in favour of the petitioner. If interim orders are not passed, not only the

petitioner but also the larger interest of the society will be seriously prejudiced by the stand taken by respondent Nos.2, 3 and 4 in not vacating their units.

32. Resultantly, the petition is required to be allowed by the following order:-

### ORDER

(i) Pending the arbitral proceedings there shall be an interim order in terms of prayer clause (a) which reads thus :-

“a) Directing respondent nos. 2 to 4 to forthwith handover the vacant possession of the premises in their occupation, i.e., (i) Unit No. 1142; (ii) Unit No. 1143; and (iii) Unit No. 1141 and 1150 in Building no. 39 constructed on the parcel of land admeasuring 849.74 sq. mtrs. or thereabouts situated at Survey No. 236-A, C.T.S. No. 5661 (Part) of village Ghatkopar-Kirol, Taluka Kurla, Mumbai Suburban District;”

(ii) Respondent nos. 2, 3 and 4 are accordingly directed to vacate the premises within a period of two weeks from today, failing which there shall be a further interim relief in terms of prayer clause (b), which reads thus:-

“b) In alternative to prayer clause (a), appointing a Court Receiver of this Hon’ble Court or any other fit and proper person as a Court Receiver with respect to (i) Unit No. 1142; (ii) Unit No. 1143; and (iii) Unit No. 1141 and 1150 in Building no. 39 with all powers under Order XLI Rule 1 of the Code of Civil Procedure, 1908, including the power to take physical possession of said premises, if necessary by breaking locks and taking police protection and handover the vacant and peaceful possession of the said flats to the petitioner to enable the petitioner to demolish the building.”

(iii) Respondent nos. 2, 3 and 4 are also directed not to create any third party rights of any nature whatsoever in respect of their respective units pending the arbitral proceedings.

(iv) Needless to observe that respondent Nos.2 to 4 on their vacating of their respective units shall be entitled to similar benefits and entitlements which are being granted to the other members of the society who have already vacated their respective premises.

**33.** The petition is disposed of in the above terms. No costs.

**(G.S.KULKARNI, J.)**