

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 12246 OF 2021
WITH
IN PERSON APPLICATION (L) NO. 12248 OF 2021
IN
WRIT PETITION (L) NO. 12246 OF 2021**

Upkar Singh Lalsingh Kochhar ...Petitioner
Versus
Maharashtra Housing and Area Development ...Respondents
Authority & Anr

Mr Upkar Singh Kochhar, *for the Petitioner present in person.*
Mr PG Lad, *with Sayli Apte & Shreya Shah, for Respondent No. 1-
MHADA.*
Ms Nikita Jacob, *for Respondent No. 2-Ex Director.*
Mr Viral Shukla, *with Priti Shukla, i/b Shukla & Associates, for
Respondent No. 3.*
Mr Anil Sakhare, *Senior Advocate, with Sagar Patil, for MCGM.*
Mr Hemant Haryan, *AGP, for the Respondent-State.*

**CORAM G.S. Patel &
S.G. Dige, JJ.**
DATED: 12th January 2023

PC:-

1. The Petitioner is an individual. He seeks several reliefs in regard to his claim to be entitled to arrears of transit rent and the

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allotment of reconstructed or redeveloped premises in a cessed property known as Ratilal Mansion at Parekh Street, Girgaon Mumbai. The 1st Respondent is MHADA. The 2nd Respondent is a private developer, Orbit Corporation Ltd, now in liquidation. The 3rd Respondent is the Ratilal Mansion CHSL.

2. Apart from the self-evident difficulties in the framing of the Writ Petition, which we will not address on merits today, for reasons that will shortly become apparent, there are many issues that arise from the facts. More importantly there are several other individuals who are directly affected, or, more accurately, directly adversely affected today. The entire situation is to our mind, representative and symptomatic of a problem that occurs repeatedly throughout the city, most especially regarding redevelopment of cessed buildings where the society has nominated a developer which has a no objection certificate from MHADA. To put it specifically at the forefront, the law so far has no effective provision in force of what is to be done when a developer firm cannot complete the construction leaving a half-completed construction, members out of their homes and on transit and large amounts of unpaid arrears of transit rent. An additional complication is that all properties are subjected to municipal property tax. When these are also unpaid the MCGM has a claim against the property itself for recovery. These developers typically hold a No Objection Certificate from MHADA. There are sufficient provisions in the statute to enable MHADA to take over the project or to allow the society to appoint another developer. A serious complication however relates to the taking over of a half-built construction that has remained in that condition, exposed to the elements annually, for years together. There is also the

additional complication of non-payment of amounts promised to society members.

3. Mr Haryan, learned AGP, says there is a proposed amendment to the MHADA Act awaiting assent. We are given to understand that this has been pending for a long time. There is, however, no framework for what is to happen to these hapless society members in the meantime.

4. As far as Mr Kochhar is concerned, his claim is through what was once a partnership firm called Omega Motor Company. He appears in person. He states that his father and uncles and other family members were partners of the firm. There were some misunderstandings. The partnership firm is not yet absolutely dissolved but according to him it was his father who continue to run the enterprise, and after his father he has continued it. Omega Motor Company was not a member of the society. It was a tenant of the society. It occupied certain premises on the ground floor. There is no dispute about the tenancy in the name of Omega Motor Company. There is also no dispute that on the MHADA's certification list of occupants and tenants, the name of Omega Motor Company does appear. But this is quite distinct from Mr Kochhar's claim to an entitlement personally, i.e., the exclusion of claims that may be made by erstwhile partners of the firm or their heirs. This is not an area that we need to examine because it can simply be addressed by requiring Mr Kochhar to provide sufficient indemnities, assurances and guarantees to the society. His possession of the premises will thus be protected.

5. The real problem is this. The original structure no longer exists. The society had 44 members in mixed use, i.e., both residential and commercial. They have been out for possession since 2009. They live and work elsewhere on transit rent and in transit accommodation. Redevelopment has taken place up to the 9th floor slab but has been halted since 2013. Transit rent has not been paid by Orbit Corporation since 2013 or thereabouts. This is the position now for a decade. In the meantime, Orbit Corporation's fortunes have not only suffered but have actually ended. Orbit Corporation is now in liquidation. It was ordered to be wound up by an order of a learned Single Judge passed on 12th April 2018. An appeal failed on 30th January 2018. On 6th June 2018, a learned Single Judge of this Court in a suit filed by the society terminated the LOC granted to the Petitioner. The liquidator accepted that NOC cancellation. That suit itself was disposed of by the order of 6th June 2018.

6. But the removal of Orbit Corporation from the project and from the equation serves nobody's interest. As a regulator, MHADA has on its hands an incomplete project with a dissatisfied society, members with unpaid rent and no hope of allotment of redeveloped homes. Possession is now a dream that is fading, if it has not faded altogether.

7. We have asked for the assistance of Mr Sakhare who regularly appears for the MCGM and Mr Patil who also appears for the MCGM because the MCGM itself is prejudiced. There are now arrears of property tax. There is an attachment levied by the MCGM. It is anybody's guess how MCGM will ever be able to recover this.

8. In the meantime, the society members and its tenant are all in serious difficulties. They have no money to compensate for the transit rent they must pay. They have no homes. To put it even more bluntly, they have absolutely no prospects.

9. It is for this reason that we believe that we would be justified in exercise of our equitable discretion from stepping in. We do so for two reasons. Not only is an intervention of the Court required in the interests of the society and the members as also the two public authorities, but we believe there is a possibility that with the assistance of appearing Advocates it might be possible to evolve a transitory mechanism or framework to deal with such situations until an appropriate legislative or statutory action by the State Government comes into force. We are not framing policy. We are not legislating. We propose to make orders for a transitional period to protect the interests of all concerned since what is before us is an increasingly common problem of the human condition in this city. It is a question and problem of displacement and of ruptures to the social fabric and to community cohesion.

10. To illustrate: societies like Ratilal Mansion exist throughout the city. Some are very old. Many are occupied by middle-income or lower-income groups. Yet, these are quite unlike the more modern developments with separate homes, greater distancing and more privacy. These old societies are really communities. Everyone knows everyone, and everyone knows everything about everyone. There are shared joys and sorrows. Enduring bonds are forged and maintained. The elders get together early morning or late evening for a stroll or a chat. The younger generation will organize some

sport or game. People are in and out of each other's houses all the time. They look after each other. This is not a romanticized vision. It is, we believe, a fairly accurate description of life in large swathes of the city.

11. But the buildings themselves degrade over time. Maintenance and repairs are expensive. Modern amenities are impossible. Hence, re-development. Hence, the appointment of an experienced developer. The promise is not just money in compensation under one head or the other. It is, above all, about *improvement* and *restoration*: to improve the buildings and tenements and to restore to the society members their community. While the work is being done, the site is to be cleared. Members must vacate. They are to be in transit accommodation — clearly temporary. They are entitled to be compensated, and that is the obligation of the developer. They are entitled to possession of their redeveloped homes. That is also the obligation of the developer. The benefit to the developer, the real 'consideration', is the free-sale component of *additional* units, which the developer can then put to sale in the open market.

12. What we must consider are the fault lines: the mid-stream failure of this process. The society's members are out of their homes and shops. The building is demolished. The members are dispersed. The community is fractured. If the project proceeds on schedule, then this is only a temporary disruption. But what if the project *fails* mid-stream? With the members out of their homes, deprived of transit rent, the building incomplete (or, in some cases, not constructed at all), and years and even decades pass without a resolution in sight? Entire generations pass in the meantime. We

have to ask ourselves if this is really what society re-development means or was ever intended to mean, and whether encouraging or incentivizing private participation in such projects is meant to only to benefit profit-driven developers but is meant primarily to assist the residents of this city? How is it even possible, we ask, that the law allows a developer to undertake a re-development, promises it profit through the free-sale component, but makes no provision at all for ensuring and safeguarding the interests of society members if the development stalls or fails, or if, as in this case, the developer goes bankrupt?

13. There will be questions of how a developer should now be appointed, what is to be done with the existing structure that has been lying incomplete and exposed to monsoon after monsoon for the last ten years, changes in development law that have taken place in the meantime, the concerns of the MCGM and of MHADA and of course how best to ensure that even if they do not get a part or perhaps even the whole of the arrears of transit rent, the society members and the tenant at least get their promised spaces.

14. With this in mind, we take the step now of initiating a suo motu Writ Petition. It will be titled “**In Re: Ratilal Mansion CHSL**”. Administrative directions are to be obtained to have that tagged with the present Writ Petition. The Respondents and noticees will be, in the following sequence,— (1) the State of Maharashtra through the housing department; (2) MHADA; (3) MCGM; and (4) the Ratilal Mansion CHSL.

15. The purpose of this suo motu Writ Petition will be:
- (a) To obtain an evaluation on site as of current date of the status of the building; specifically, to see whether that incomplete construction can be completed. This will require a structural assessment.
 - (b) To identify a developer who can either complete the project if that is technically feasible or who is prepared to demolish the existing structure and redevelop the property in accordance with extant law under an NOC from MHADA and a consent from the society.
 - (c) Alternatively, whether it is possible for the society to self-redevelop the project. We clarify this to mean that in a self-redevelopment the society will need to engage a project management consultant, an architect, a contractor, a structural engineer firm and so on. But it will also be entitled to additional FSI benefits in its own name and will be entitled to put these in the open market as any private developer would have been entitled to do.
 - (d) Questions of compensation if any and to what extent these can be offered to the society and Mr Kochhar on behalf of Omega Motor Company.

16. These are not the only questions. There will be other issues that arise at a later stage.

17. We are deliberately excluding from this entire reckoning the official liquidator of Orbit Corporation Ltd. We do so for the simple reason that this was a redevelopment of a cessed structure. It cannot, therefore, in law be said to an asset of the company at all. There is a complete failure of consideration. A developer would be entitled to the free sale component only upon the developer fulfilling its obligations under the NOC and in law, namely, to pay the full amount of transit rent (which is precisely what Mr Kochhar seeks) and providing permanent alternative accommodation with an Occupancy Certificate. Orbit Corporation has done neither of these. It therefore cannot claim to have a title to any part of the project as an asset of the company. The liquidator has in any case accepted the termination of the NOC as referred in the order of 6th June 2018 and that is the end of that chapter.

18. Finally, there is the question of payment of municipal taxes and other dues.

19. We will require the assistance of Mr Sakhare and Mr Patil for the MCGM and Mr Lad for MHADA and Mr Shukla on behalf for the society as we go through this. Mr Sakhare will need to consider how the demand for property tax, given that it is in arrears, and there will be questions of interest and penalty, is to be addressed if there is (1) a new developer or (2) the society self-redevelops. Some

form of discretionary action may be required from the Municipal Commissioner.

20. We are not passing any order in that regard at this stage because we do not know what is the amount that is currently in arrears.

21. As a first step therefore, after the suo motu Writ Petition is registered, we will require to have on record the MHADA's certified list of occupants.

22. In the meantime, we request both the MCGM and MHADA to depute their technical personnel to visit the site without delay within the next ten days to conduct a preliminary investigation as to the structural stability of the incomplete structure. A written report of some kind would be advisable. If a more detailed investigation is required at a later stage, separate orders will be made in that behalf.

23. For the present, list the matter for further orders to directions on 3rd February 2023.

24. The 3rd Respondent's vakalatnama in Mr Kochhar's Petition is to be filed in the Registry.

25. Liberty to the Advocates Mr Sakhare who regularly appears for the MCGM and Mr Patil who also appears for the MCGM to obtain copies of the relevant papers.

26. List the matter on 3rd February 2023 on the supplementary board for orders.

(S. G. Dige, J)

(G. S. Patel, J)