



Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 947 OF 2020
WITH
INTERIM APPLICATION (L) NO. 1298 OF 2024
IN
WRIT PETITION NO. 947 OF 2020
WITH
INTERIM APPLICATION (L) NO. 27067 OF 2022
IN
WRIT PETITION NO. 947 OF 2020
WITH
IN PERSON APPLICATION (L) NO. 16160 OF 2022
IN
WRIT PETITION NO. 947 OF 2020
WITH
IN PERSON APPLICATION (L) NO. 16159 OF 2022
IN
WRIT PETITION NO. 947 OF 2020
WITH
IN PERSON APPLICATION (L) NO. 16158 OF 2022
IN
WRIT PETITION NO. 947 OF 2020
WITH**

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IN PERSON APPLICATION (L) NO. 16117 OF 2022

IN

WRIT PETITION NO. 947 OF 2020

WITH

IN PERSON APPLICATION (L) NO. 16116 OF 2022

IN

WRIT PETITION NO. 947 OF 2020

WITH

IN PERSON APPLICATION (L) NO. 16114 OF 2022

IN

WRIT PETITION NO. 947 OF 2020

WITH

INTERIM APPLICATION (L) NO. 26742 OF 2021

IN

WRIT PETITION NO. 947 OF 2020

Rusi Postwalla & Ors

...Petitioners

Versus

Maharashtra Housing And Area Development
Authority & Ors

...Respondents

Ms Naira Jeebhoy, with Diksha Shetty, Ashutosh & Saaniya Sait,
i/b AAK Legal, for the Petitioners.

Mr Siddharth Rajamohan, i/b Punit B Anand, for Respondent No. 12
& Applicant in IAL/27067/2022 in WP/947/2020.

Mr Viral Dilip Shukla, with Priti Shukla, Rudra M Dani, i/b Shukla
and Associates, for Respondents Nos. 7 to 10.

Mr Karl Tamboly, with Yazdi P Jijina, i/b Mulla & Mulla and
Craigie Blunt & Caroe, for Respondent Nos. 11, 16-24, 26-28, 32-

49, 59, 60-66, 73-100, 102-107, 112-119, 126-140, 144-149, 151-154, 157-160, 163-172 and 181-194.

Mr Karl Tamboly, with *Yazdi P Jijina, i/b Mulla & Mulla and Craigie Blunt & Caroe*, for the Applicants in IAL/1298/2024 in WP/947/2020.

Mr Pritish Das, with *Nidhi Potla, i/b Brus Chambers*, for Respondent No. 30.

Mr Vaibhav Salvi, with *Ashweet Bhoir, i/b Vishal Dushing*, for Respondents Nos. 156.

Mr Cyrus Ardeshir, with *Ziyad Madon, Dimple Merchant, Gaurav Jangle & Yash Pitroda, i/b IV Merchant & Co*, for Respondents Nos. 197 & 198.

Mr PG Lad, with *Sayli Apte*, for the Respondent-MHADA.

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 29th January 2024

PC:-

1. Matters have taken a turn but not necessarily for the better. Our order of 14th December 2023 identified the issue of title that the owners represented by Mr Shukla faced and how this was coming the way of getting necessary permissions from the Municipal Corporation of Greater Mumbai (“MCGM”) and other authorities. Since then, matters have progressed internally such that the sisters of one of the title holders, the 7th Respondent, the heirs of Ramkishandas Kedarmal, have relinquished their interest in favour of the brother Shailesh Agarwal. There are thus now four owners: Sureshchandra Agarwal with 25%, Shailesh Agarwal with 37.5%, Daudayal Goyal with 12.5% and Yogesh Agrawal with 25%.

2. The problem that has now arisen is that these four owners have broken ranks with developer, Lily Commodities, represented by Mr Ardeshir and in respect of whose appointment there were consent terms that were finally made an order of the Court.

3. This split has consequences beyond the developer and the property owner. The inevitable but we do not say acceptable, collateral damage is the 80 families or more who live in the building at Princess Street. Their future is now in jeopardy. Nobody knows who will develop the building or how. Nobody knows when this will be done and as Mr Carlos for the MCGM says it is impossible to say whether this building will survive yet another monsoon.

4. We have made our views plainly clear to the owners who are pursuant to our directions present in Court at 2.30 pm. We hold them primarily responsible. As owners they have to be. If there is untoward incident merely because no one has acted, they will be liable both in civil and criminal law.

5. Although there are provisions of the consent terms, we will defer a consideration of these to a later date. This is because in an Interim Application Mr Tamboly for some of the Respondent tenants has sought the appointment of Court Receiver inter alia to implement the consent terms and give effect to what those consent terms protect.

6. In *Chandralok People Welfare Association v State of Maharashtra & Ors*¹ we have held that while an owner has a right to redevelop, the owner does not have the option of doing nothing when a building is either brought down or is required to be brought down. The law permits the owner to redevelop the building but if he does not do so allows tenants to reconstruct the building i.e., so that they get reconstructed premises of exactly the same area on a tenancy basis.

7. A proper balancing, therefore, requires that we must give these owners some reasonable time, though not an indefinite amount of time, to come before this Court with a firm proposal for redevelopment. Mr Shukla has instructions in Court to say that such a proposal will be brought before this Court and we give the developer the owners four weeks to do so. We make it clear that we do not want to hear on that date that there is some proposal with some developer proposing something. We will need particulars and most especially we will require the name of the developer, a representative to be in Court, preferably a signed Memorandum of Understanding (“MoU”) (the detailed agreement can follow later) and identification of the commitments to be undertaken by the developer, a demonstration of the financial credentials of the developer, and details of the commercial developments/redevelopment work done by the developer.

8. Undoubtedly any developer (whether brought by property owners or the tenants) must be shown a copy of the consent terms

1 2023 SCC OnLine Bom 2300.2

and the provisions of those consent terms so that there is no misunderstanding going forward. We have not to be understood to have bypassed or overwritten the consent terms. On the contrary we maintain them and we will not permit any party to unilaterally resile from them. It is our every intention to enforce those consent terms because those consent terms now are the order of the Court.

9. We require this because the site and the location are especially challenging. The street is narrow. It is a divided carriageway. Access for heavy equipment and machinery will be difficult. Removing excavated material will pose yet another challenge of its own. There may be other complications.

10. If we do not have a proposal from the owners by 1st March 2024, a little over four weeks from today, we propose to turn the matter over to the hands of the tenants and give them in turn time until 2nd April 2024 to come forward with their proposal for reconstruction. We will also consider an application from Mr Tamboly and Ms Jejeebhoy for the appointment of Court Receiver in terms of Interim Application and to authorize the receiver to appoint a contractor. We will hear both sides on the question of apportionment of development benefits thereafter.

11. We have made it clear to both sides that we no great anxiety to dispose of this Petition. Our concern is now and always has been the re-accommodation of the affected families in this building. Until that is done, and the last person is put in to possession of a properly reconstructed or redevelop building, we propose to keep this

Petition pending and have it listed periodically for status updates. Certainly, if there is a Court Receiver this will happen automatically. The owners should not expect that there will be exceptional leniency shown. We have given them the first option because they are the owners. This does not mean and should not be mistaken to mean that we have given them a priority preference over others when it comes to a question of listing our concerns.

12. The owners are at liberty to file Reply to Interim Application by 16th February 2024.

13. For the present, list the matter high on board on 1st March 2024. Liberty to all to apply.

14. Mr Shukla makes a submission that in the meantime, essential repairs should be permitted. We do not know what this is supposed to mean. Nobody has a list of the repairs. Many things are said to be done in the city in the guise of repairs. If the owners are now enthusiastic about repairs, they must inform the Court what those repairs are and what is proposed to be done. They may have the matters listed for this purpose without requiring a formal Interim Application but with an appropriate compilation of necessary documents. Notice of any such application must be given to all concerned. We expect that both the MCGM and Maharashtra Housing and Area Development Authority will be given notice as well so their officers can apply their minds to the repairs if any that are proposed.

15. The only thing that the owners can be permitted to do is to proceed with the application for updating the necessary records with the MCGM and the Land Registry to show the names of these four persons as the owners of the land in question. Had the project been taken up for redevelopment, we might have accelerated that process with some appropriate directions. We see no reason to make exceptions for these owners at this stage.

(Kamal Khata, J)

(G. S. Patel, J)