
(2011) 08 BOM CK 0197

In the Bombay High Court

Case No : L.P.A. No. 202 of 2011 in Writ Petition No. 7389 of 2008 with Civil Application No. 272 of 2011

Kiran Baburao Vanjari and Others

APPELLANT

Vs

M/s Goregaon Unnati CHS Ltd. and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Development Control Regulations for Greater Bombay, 1991 — Regulation 33(5)
Maharashtra Housing and Area Development Act, 1976 — Section 95, 95A

Citation : (2012) 1 BomCR 172 : (2011) 6 MhLj 579

Hon'ble Judges : P.B. Majmudar, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : J.J. Bhatt, with Y.C. Naidu, Kamlesh Kharade and Ms. Nidhi Singh, instructed by M/s India Law Alliance, for the Appellant; Aspi Chinoy and P.K. Samdani s with A.A. Joshi, instructed by M/s Viraj Maniar Associates, for respondent No. 1, P.K. Dhakephalkar , instructed by V.C. Ghosalkar and G.W. Mattos, Assistant Government Pleader for respondent Nos. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—Since it is agreed by the learned counsel appearing for the parties that this appeal can be disposed of finally at the admission stage itself, we have heard the matter on merits at length forthwith. Hence admitted. Learned counsel and the learned Assistant Government Pleader, appearing for the respective parties appear and waive notice of admission.

2. The present appeal is directed against the judgment and order of the learned single Judge dated 21st July, 2011 passed in Writ Petition No. 7389 of 2008 by which the writ petition filed by the present appellants has been dismissed by the learned single Judge. The said writ petition was filed by the appellants challenging an order passed by the Judge, Co-operative Court No. IV at Mumbai, dated 12th September, 2008 in C.C-IV/ 96/08 by which the Cooperative Court declined to grant any interim relief sought by the present appellants in the said

dispute. The said order was challenged by the appellants before the Maharashtra State Co-operative Appellate Court, Mumbai, in A.O. No. 112 of 2008 and the Appellate Court also dismissed the appeal vide order dated 3rd October, 2008 against which, as stated above, the writ petition was Filed before the learned single Judge. The learned single Judge dismissed the said writ petition and confirmed the order passed by both the authorities below.

3. The learned single Judge also observed in the order that in case the dispute filed by the present appellants is allowed by the Co-operative Court, respondent Nos. 1 and 2 will not be permitted to claim any equity even if they proceed with the development work. This direction has been given by the learned single Judge as the writ petition was filed before the learned single Judge was against an interlocutory order by which interim relief was not granted by the Cooperative Court in favour of the present appellants. During the pendency of the writ petition, Mumbai Housing Area and Development Board ("MHADA") had initiated proceedings on 27th February, 2009 u/s 95A of the Maharashtra Housing and Area Development Act, 1976 (hereinafter the "said Act of 1976") for summary eviction of the appellants with a view to see that the development work may proceed as per the No Objection Certificate granted by MHADA. Initially, the order of summary eviction issued by MHADA was challenged by the appellants by way of Writ Petition (Lodging) No. 431 of 2009. A Division Bench of this Court vide order dated 13th April, 2009, held that MHADA was competent to issue such eviction order u/s 95A of the said Act of 1976. Against the dismissal of the said writ petition, the appellants had preferred a SLP being SLP (Civil) No. 10173/2009. The Supreme Court has disposed of the said SLP on 9th April, 2010. The said order of the Supreme Court reads thus:

Leave granted. The appellants herein were the petitioners in Writ Petition (L) No. 431 /2009 on the file of the Bombay High Court. In the said writ petition, the appellants challenged a notice dated 27-2-2009 issued by the Maharashtra Housing and Area Development Authority (MHADA, the first respondent herein) requiring them to shift from their respective tenements in Goregaon Unnati Co-operative Housing Society Ltd. (4th respondent) within 48 hours from the receipt of that notice, failing which action will be taken to shift them summarily at their risk and cost. The Division Bench of the High Court dismissed the said writ petition by the impugned order dated 13-4-2009.

2. It may be mentioned that the appellants had filed a more comprehensive petition, W.P. No. 7389/2008, before the High Court wherein they have challenged the order dated 12-9-2008 of the Cooperative Court No. 4, Mumbai whereby their applications for interim relief was rejected and the order dated 3-10-2008 made by the Maharashtra State Co-operative Appellate Court, Mumbai affirming the said rejection.

3. When the SLP seeking leave to file this appeal against the order dated 13-4-2009 in W.P. No. 431/2009 came up on 27-4-2009, this Court ordered notice and granted interim stay of execution of the MHADA's order dated

27-2-2009.

4. After the matter was argued for some time, learned counsel for the petitioners submitted that he may be permitted to withdraw W.P. No. 431/2009 challenging the MHADA's order dated 27-2-2009 and raise all contentions comprehensively in W.P. No. 7389/2008 pending before the High Court subject however to the condition that for a period of four weeks MHADA should stay any action in pursuance of the order dated 27-2-2009.

5. Having heard the learned counsel, and on the facts and circumstances, we consider this a fit case where the various contentions urged by the petitioners herein should really be urged in the pending matter before the Maharashtra State Co-operative Court and in me W.P. No. 7389/2008 which arises from the interim order of the Co-operative Court. Having regard to the fact that W.P. No. 431/2009 challenged only the order which directed shifting within 48 hours, several contentions with reference to merit could not be urged by the parties and all documents also could not be placed. All parties are at a disadvantage as the scope of W.P. No. 431/2009 was rather limited and before us they could urge only issues that arose from the said writ petition. In the circumstances, we are of the view that the request of the petitioners for permission to withdraw the writ petition itself with liberty to urge all contentions in the writ petition pending with reference to the order of the Co-operative Court deserves to be accepted.

6. We, therefore, allow this appeal in part, set aside the impugned order of the High Court dated 13-4-2009 without examining it on merits, and permit the appellants to withdraw W.P. (L) No. 431/2009 and urge all their contentions in regard to validity of several resolutions in W.P. No. 7389/2008 which is pending. W.P. (L) No. 431/2009 is dismissed as withdrawn. To enable the appellants to do so, we record the submission on behalf of the MHADA that they will not give effect to the order dated 27-2-2009 for a period of four weeks. Having regard to the factual background and having regard to the fact that many of the members who in pursuance of the arrangement with the builders have already shifted from the premises and are staying in transit accommodations for several years, we request the High Court to dispose of the matter expeditiously. All contentions are left open.

4. The appellants thereafter, in the original pending petition, took out an amendment application challenging the notice issued by MHADA. The learned single Judge granted the amendment application and thereafter referred the matter to the Division Bench in view of the fact that certain prayers made in the writ petition were within the jurisdiction of the Division Bench. The matter thereafter came up before a Division Bench of this Court (C.J. & S.J. Kathawalla, J.) on 24th November, 2010. The Division Bench recorded the statement made by Mr. Mattos, learned counsel for MHADA, that since orders u/s 95A of the Act of 1976 has been issued without following the principles of natural justice, the said orders are withdrawn and fresh orders will be passed. The Division Bench recorded the said statement of the learned counsel for MHADA. Subsequently,

MHADA issued fresh notices to individual appellants and after giving hearing to them passed a reasoned order on 11th January, 2011. By the said order, MHADA directed the appellants to shift to the transit camp accommodation made available to them within seven days from the receipt of the said order failing which the appellants would be summarily evicted from the tenements in their occupation. In view of the said decision of MHADA, the appellants sought amendment in Writ Petition No. 7389 of 2008, challenging the said order dated 11th January, 2011, which petition is originally filed challenging the interim order of the Co-operative Court by which interim relief was refused in favour of the appellants. The Division Bench allowed said amendment on 12th January, 2011 and the petition was accordingly amended challenging the decision of MHADA u/s 95A of the Act of 1976. Subsequently, the Division Bench by its order dated 3rd February, 2011 came to the conclusion that the petition was earlier placed before the Division Bench in view of the other reliefs that were sought and which are now not pressed. The Division Bench further observed that since the subject-matter of the petition confined to prayer clauses (a), (b), (d) (v)(i), which pertains to the jurisdiction of the learned single Judge, directed the Registry to examine and place the matter before the appropriate Bench. The matter was accordingly placed before the learned single Judge. Before the learned single Judge, there were two basic issues, one was regarding not granting interim relief in the pending dispute by the Co-operative Court and the other was regarding challenge to the fresh order passed by MHADA regarding summary eviction order passed by MHADA on 11th January, 2011. The learned single Judge decided both the issues against the present appellants by holding that the Co-operative Court has not committed any error in not granting any interim relief to the appellants. The learned single Judge also held that the fresh decision taken by MHADA is in accordance with law and, therefore, the said order is not required to be set aside in the writ petition. Against the dismissal of the said writ petition, the instant Letters Patent Appeal has been filed by the original petitioners of Writ Petition No. 7389 of 2008, who are original disputants before the Co-operative Court in the dispute.

5. The appellants are members of the first respondent-Society ("the Society") and are staying with their family members in the respective tenements/ flats since several years. The premises in question are chawls bearing Nos. 19, 20, 21 and 24. The Society decided to demolish these chawls for the purpose of redevelopment and in this connection a meeting was held on 17th April, 2005 in which certain resolutions were passed. In pursuance of this meeting, a decision was taken by the society for redeveloping the concerned chawls. Accordingly, redevelopment agreement dated 30th April, 2006 followed by a Supplementary Agreement dated 3rd August, 2007 were executed. The appellants took out an objection to the fact that the premises in question belong to MHADA as MHADA has already executed a lease deed in favour of the society. The society thereafter approached MHADA for the purpose of redevelopment of the buildings and for granting No Objection Certificate in connection with the chawls numbering from

19 to 25 i.e. 7 chawls in all. Even earlier to that, a No Objection Certificate was granted in connection with redevelopment of chawl Nos. 22, 23 & 25 in the year 2000. The occupants of the aforesaid chawls were willing to carry out the development at their own costs and ultimately occupants of the aforesaid chawls constructed ground plus two floors by exploiting the available FSI. Since occupants of other chawls were not in a position to carry out the redevelopment on their own in view of financial difficulties, the earlier No Objection Certificate which was granted in the year 2000 was confined only to chawl Nos. 22, 23 & 25. It is not in dispute that the occupants of the said chawls carried out the redevelopment at their own costs and have also utilised the FSI available to them. Subsequently, question arose regarding development of chawl Nos. 20, 21 & 24. The Managing Committee of the Society held a meeting on 23rd January, 2006 in connection with the redevelopment of these three chawls and at the time of discussion it included chawl No. 19 also. Subsequently, a development agreement was executed on 30th April, 2006 and on the basis of the same, MHADA gave No Objection Certificate for developing of the aforesaid chawls. The Municipal Corporation also gave necessary approvals in this behalf. The society thereafter issued letters to the members including the appellants on 29th December, 2006 asking them to give their consent. A reference was also made to the Intimation of Disapproval (IOD) from the Municipal Corporation of Greater Mumbai. Since the appellants were apprehensive that by virtue of the aforesaid No Objection Certificate granted by MHADA regarding development of subsequent chawls and since they are likely to be dispossessed without due process of law, a civil suit was filed being Suit No. 515 of 2007 and took out Notice of Motion No. 60 of 2008. Having realised that such suit is not maintainable, the suit was withdrawn as the Civil Court has no jurisdiction to decide the controversy. Subsequently, the appellants approached the Cooperative Court by way of fresh proceedings as stated above. Before the Cooperative Court, various reliefs were claimed such as execution of the agreement dated 30th April, 2006 between the society and the builder is bad in law, that the supplemental agreement dated 3rd August, 2007 between the society and the builder is bad in law and illegal. The appellants also challenged the decision taken at its meeting dated 17th April, 2005. Further a declaration was also sought for to the effect that the resolutions passed by the Society in its meeting dated 17th April, 2005 can be restricted only qua chawl Nos. 20, 21 and 24 and the same is not applicable so far as chawl No. 19 is concerned. It is also prayed that the meeting held on 2nd April, 2006 be held to be illegal and contrary to law. The learned Judge of the Co-operative Court came to the conclusion that once the resolution is passed by majority of the members of the society, it is not open to the minority members to challenge the resolution of the Society and obstruct the redevelopment work in connection with the aforesaid four chawls. The cooperative Court accordingly declined to grant any interim relief. Against the said order, an appeal was preferred before the Co-operative Appellate Court and the Appellate Court also dismissed the said appeal and the said decision was accordingly challenged before the learned single Judge. In the meanwhile, as

pointed out earlier, in order to see that the development agreement can be effectively enforced, MHADA took out proceedings u/s 95A of the Act and the subsequent decision of MHADA in this behalf is also challenged by way of amendment in the present writ petition.

6. The learned single Judge, after considering various minutes of the society, ultimately held that once the majority of the members have decided to go for development work, it would not be proper to halt the development at the instance of the present appellants. The petition was accordingly dismissed on the aforesaid aspect. The learned single Judge also held that all No Objection Certificates which are pending and issued prior to the issuance of the Resolution dated 6th December, 2008 are thus covered by the amended D.C. Resolution 33 (5) and (7). In view thereof, section 95A of the Act of 1976 is also applicable in order to see that the development work is properly implemented. The prayer made by the appellants before the learned single Judge on both the counts was accordingly rejected against which the present appeal is filed.

7. Mr. Bhatt, learned senior counsel appearing for the appellants, along with Mr. Naidu, submitted that so far as chawl No. 19 is concerned, there was no resolution passed by the general body of the society in connection with redevelopment of the same. It is submitted that the present appellants are not parties to any such resolution passed by the Society. It is submitted that the Executive Committee on their own could not have included chawl No. 19 in the redevelopment plan, unless the same was approved at the general body meeting. It is submitted that unless the meeting of the general body is held in this behalf and approved by 70 per cent majority, resolution passed by the society is not permissible in law. It is submitted that since there is no resolution regarding redevelopment of chawl No. 19, MHADA could not have issued NOC as there was no requisite majority of 70 per cent members present in such meeting. It is submitted that no redevelopment work has yet started and only some members have vacated their existing premises. It is further submitted that unless all the members occupying their respective premises vacate, development work cannot be undertaken as per the clauses in the development agreement. It is submitted that the Co-operative Court has not properly taken into consideration prima facie case in favour of the appellants and considering the facts and circumstances of the case, interim relief ought to have been granted by the Co-operative Court. It is submitted that if the development work is over, it is difficult to adjust the equities even if the dispute of the appellants is allowed by the Co-operative Court. During the course of hearing, the learned counsel appearing for the appellants submit that the appellants are not objecting the redevelopment but the members may be allowed to develop the property on their own. It is further submitted that by allowing development of different chawls in different manner, it may result into bifurcating/splitting up of the existing society. It is further submitted that the subsequent resolution by which chawl No. 19 is included in the redevelopment is passed by the Executive Committee and not by the General Body. It is submitted that the initial NOC

granted by MHADA was for development by individual persons and on the basis of the same, no development should be allowed so far as chawl No. 19 is concerned. It is submitted that the appellants have not been given benefit of additional FSI. It is further submitted that in order to balance the equities, at least one portion may be kept entirely open and the appellants are willing to vacate their existing chawls and ultimately if they succeed in the dispute before the Co-operative Court, they may get benefit of the additional FSI in case some area is kept vacant. It is pointed out that even the information obtained under the Right to Information Act shows that at the relevant time there was no consent of 70 per cent for the redevelopment scheme.

8. Mr. Samdani, learned senior counsel appearing for the first respondent society, on the other hand, submitted that so far as land is concerned, it belongs to MHADA and society is the lessee. It is submitted that in view of the financial difficulties if MHADA is not in a position to develop the land in question, MHADA decided to redevelop the same by taking benefit of private participation. It is submitted that there are 56 members and initially those members who had shown their willingness to develop at their own cost were granted no objection certificate for such development in the year 2000. It is submitted that out of 56 members, 24 members took the benefit of such development as per the no objection certificate granted in the year 2000. 32 members had not taken benefit of such redevelopment at the relevant time since it was not possible for them to incur expenditure for such redevelopment and because of financial constraints only partial development had taken place. As pointed out earlier, out of 56 members, 24 members took the benefit of development and spent their own money for such development. It is submitted that the construction in question is very old one and the remaining three chawls are required to be renovated immediately. In view of the same the aforesaid 32 members subsequently proposed for redevelopment of the remaining area. Remaining 24 members were not interested as they have already developed the area in which they are residing on the basis of no objection certificate granted in the year 2000. The real interested members can be said to be 32 occupants who are occupying chawl Nos. 19, 20, 21 and 24. Mr. Samdani pointed out that even as per the averments made before the Co-operative Court, chawl No. 19 is already included in the redevelopment. Regarding area, it is submitted that there is not a single word or averment in this respect in the dispute before the Cooperative Court. It is submitted that if 24 members, who were not interested in pursuing the development work, are taken out from the consideration, it is not in dispute that out of 32 members, there was a majority of 70 per cent who had agreed for such redevelopment. It is submitted that there is absolutely no challenge to the resolution on this aspect. At this stage it is pointed out by Mr. Samdani that at the time when the SLP was pending before the Supreme Court, at the time of entertaining the Special Leave Petition, the Supreme Court passed an order by which the Society was permitted to pass fresh resolution. Of course, this aspect was not argued or pointed out by the learned counsel for the appellants at the

time of arguments. As pointed out earlier, the said SLP was in connection with the order of MHADA asking the appellants to hand over possession by way of summary eviction. The Supreme Court, in the meanwhile, permitted the society to hold a meeting of its members and pass appropriate resolution. It is submitted that the said new meeting was conducted in view of the Supreme Court order and in the said meeting, all 56 members were requested to remain present i.e. 32 members who had not taken benefit of development earlier and remaining 24 members who had already developed their property. In the said meeting, the occupants of chawl No. 19 also remained present. In the aforesaid meeting, 70 per cent of the members opted in favour of development. It is submitted that in view of the subsequent development, even if it is assumed that in the initial meeting held by the Society there was no requisite majority of 70 per cent members who had opted for redevelopment, in the subsequent meeting of General Body, the resolution is passed when 70 per cent of the members opted for such redevelopment. It is submitted that in view of the same, the appeal filed by the appellants is required to be dismissed. Reference is also made to D.C. Regulation 33 (5). It is submitted that after coming into force D.C. Regulations, proceedings can be initiated u/s 95A of the Act of 1976, if redevelopment had not taken place. Regarding the actual area which the appellants are entitled to, it is pointed out that the society is the leaseholder and the premises belong to MHADA and it is the society who is entitled to have the area and not the individual members.

9. Mr. Dhakephalkar, senior counsel appearing for respondent No. 2, submitted that once the society passes a resolution for redevelopment by requisite majority and once such redevelopment is permitted, the subsequent order passed by MHADA regarding eviction is nothing but a consequential order. With a view to see that in order to give more teeth for carrying out development work, unless a person is asked to vacate the premises, such redevelopment work may not be possible. It is submitted that the Co-operative Court, after considering the facts of the case, has declined to grant any interim relief as prayed for by the appellants. Such discretionary order has rightly not been interfered with by the learned single Judge. It is submitted that since the appellants have failed to get any interim relief from the Co-operative Court and their appeal against the non-grant of interim relief was also dismissed by the Appellate Court and the learned single Judge has also dismissed the petition and in view of the same, this Court may not interfere with the discretionary orders passed by the Courts below. It is submitted that society is the owner of the structure and the FSI is available only to the society and not to the individual members. It is submitted that in case the dispute of the appellants is allowed by the Co-operative Court and if any order is passed in favour of the appellants for giving additional FSI, respondent No. 2 orally undertakes to this Court to abide by the same and if any additional area is to be given, respondent Nos. 1 and 2 shall provide the same and will abide by the decision of the Co-operative Court, subject to their right to challenge the order in appeal. It is submitted that no equity will be claimed by respondent Nos.

1 and 2 in this behalf simply on the ground that during the pendency of the dispute, development work is carried out. This statement is made by the learned counsel on the basis of the instructions received from respondent No. 2- Similar statement is also made on behalf of respondent No. 1 that in case the Cooperative Court comes to the conclusion that the appellants are entitled to larger area, at the time of giving them occupation after redevelopment work is over, respondent No. 1 also undertakes and see that said order will be complied with subject to further right of appeal, etc. and on that basis if the appellants want to make any additional construction adjoining its own premises, the society will see that the same is done and at that time no equity will be pressed into service. It is submitted by Mr. Dhakephalkar that the area to be considered is only built up area and not the area which is utilised by the member. It is submitted that initially in the year 2000, MHADA gave NOC for the purpose of construction of row houses and the members spent their own money had accordingly constructed row houses. Subsequently, fresh NOC is granted regarding development of chawl Nos. 19, 20, 21 and 24. It is submitted that the Officer under the Right to information Act has not considered any factual aspect into consideration or he was having any subsequent decision by which general body of 70 per cent members passed a resolution for redevelopment of chawl Nos. 19, 20, 21 and 24 which meeting was convened in view of the Supreme Court order.

10. Mr. Mattos, learned Assistant Government Pleader, appearing for the State as well as appearing for MHADA, submitted that it cannot be said that the original NOC can be said to be still in force. It is submitted that at the relevant time in the year 2000, the carpet area was very less and as per the D.C. Regulations prevailing at that time only 1.5 FSI was available. It is submitted that today the carpet area is 327 sq.ft. It is submitted that NOC given in the year 2006 is in favour of the society and not in favour of individual members. It is submitted that once redevelopment is permitted by MHADA, MHADA is entitled to pass consequential order for summary eviction of those members who are not co-operating. It is submitted that earlier order u/s 95A was passed without giving hearing to the concerned occupants, that the same was withdrawn and now a detailed fresh order is passed, after considering all the relevant aspects of the matter. It is submitted that the MHADA has also considered the fact that there was requisite membership of 70 per cent while opting in favour of redevelopment. It is submitted that the subsequent resolution passed by the General Body i.e. 10th January, 2010 is not even under challenge. It is submitted that considering the aforesaid aspects, these proceedings have been filed by non-co-operative members only at the instance of someone in order to torpedo the development work. It is pointed out that respondent No. 2 has also offered transitory accommodation and the moment when the construction work is over, the newly constructed premises will be available to all members including the present appellants. It is submitted that today out of 32 members, even 24 members have already vacated and only 8 members are raising dispute one after

another. In this process, the development work is likely to be delayed and those 24 members who have already vacated the premises with a fond hope that they will get newly constructed premises within a reasonable time, would be deprived, if the development work is halted in view of the non-co-operative approach on the part of only 8 members. It is submitted that out of total 56 members, except 8 members, all have decided in favour of redevelopment. It is submitted that in view of the same, these proceedings have not taken out by the appellants with a bona fide intention and, therefore, the orders of all the three Courts below in connection with non-granting of interim relief is not required to be interfered with by this Court in this Appeal.

11. We have heard the learned counsel appearing for the parties at great length and have also gone through the voluminous documents produced on record by the learned counsel for the parties.

12. The first aspect which requires consideration is that on behalf of respondent No. 2, transitory accommodation is already made available to all the occupants including the present appellants. The learned single Judge has observed in paragraph 26 as under.

Mr. Samdani points out the salient features under this development agreement, namely, 32 occupants of four chawls were to get (i) flat admeasuring 900 sq.ft. Area free of costs, (ii) Rs. 5 lakhs to each member; (iii) Rs. 8000 per month towards the rent for transit accommodation, (iv) Rs. 8000 towards brokerage charges.

13. The main grievance raised on behalf of the appellants is in connection with additional FSI. It is the apprehension of the appellants that if smaller area is given to mem after reconstruction and if it is ultimately held that they are entitled to have a larger FSI, it will be difficult to salvage the said situation. Another grievance of the appellants is that redevelopment of chawl No. 19 was not initially put for debate in the meeting of the General Body and only Executive Committee had taken decision to include chawl No. 19. It is submitted that in view of the same, chawl No. 19 could not have been subjected to redevelopment. The main question which requires consideration is as to whether the occupants of chawl No. 19 are party to any resolution for redevelopment of the same and whether 70 per cent requisite majority was available at that time. It is one of the requirement of law that if majority of the members decides to go for redevelopment of the existing premises, a resolution to that effect is required to be passed by the Co-operative Housing Society and if 70 per cent decides in favour of such redevelopment, then the redevelopment work can be given green signal by MHADA. MHADA is also required to consider as to whether the transitory accommodation which are given to the members have adequate facility so that during the intervening period, the members may not suffer for want of roof over their head. In short, the MHADA is required to consider the interest of the members who are likely to be evicted for temporary period. One may have to suffer little bit hardship during the interregnum but in return one may get better

accommodation and solve life long problem of accommodation. Considering the facts of the case, the Court is required to consider as to whether at the instance of few individuals, the entire development work of chawl No. 19 is required to be halted or whether development work is allowed to proceed subject to final decision in the pending dispute before the Co-operative Court.

14. As pointed out earlier, initially when summary eviction order passed by MHADA u/s 95 of the Act of 1976, the appellants had preferred writ petition being Writ Petition (L) No. 431 of 2009 which came to be rejected by a Division Bench of this Court on 13th April, 2009. Against the said order, SLP was preferred. The Supreme Court on 4th December, 2009 passed the following order:

List for final disposal in the first week of February, 2010. Additional documents, if any, to be filed by then.

In the meanwhile, the Society may hold a meeting of its members and pass appropriate resolution without prejudice to the rights and contentions of the parties.

Subsequently, the said SLP was disposed of by the Supreme Court on April 9, 2010 by permitting the present appellants to withdraw Writ Petition (L) No. 431 of 2009 and to urge all the contentions in regard to validity of resolutions in the pending writ petition.

15. As pointed out earlier, the aforesaid SLP was in connection with the order passed by MHADA regarding summary eviction u/s 95A of the Act of 1976. Subsequently, as pointed out earlier, the aforesaid order was withdrawn on the ground that the same was passed without hearing the concerned appellants. Thereafter MHADA has passed a fresh order on 11th January, 2011 u/s 95A of the Act of 1976, after hearing the appellants which was also subject-matter of writ petition before the learned single Judge. Pursuant to the order of the Supreme Court, the Society held a special general body meeting on 10th January, 2010. In the said meeting 39 members were present which included occupants of chawl No. 19 as well as occupants of other chawls. In the said meeting, occupants of all the chawl were present. As per the resolution of the said meeting, it was resolved that the members had given their consent for demolishing chawl Nos. 19, 20, 21 and 24 of the four housing society and to construct multistoried building at its place and to appoint S.D. Construction Developer for carrying out the development. It was also resolved that members shall be provided flats without any consideration having carpet area of 900 sq. ft. to the original 32 shareholder members of the chawl in lieu of their old flats in the building which will be constructed and permission was being granted to the developer to sell remaining flats in open market. It is provided that the resolution had been passed by majority. In the said resolution, there is also a noting to the effect that an objection was taken by an individual member that the tenure of the Committee was over and, therefore, new meeting could not have been held. Of course, as pointed out earlier, this new meeting was never subject matter of

dispute. Learned counsel for the appellants pointed out this fact during the course of argument but it is the other side pointed out that even subsequently there is a resolution of all the requisite members for sanctioning the development work of chawl No. 19. Consent letters have been given by individual members showing their willingness for development of chawl No. 19. Not only that, on the basis of the same, the occupants of chawl No. 19 have already vacated and only two members of chawl No. 19 have not vacated and taken out these legal proceedings. Few of the occupants in the remaining chawls, in all 8, are disputing the decision of the society for redevelopment and majority of the members have already vacated. It is required to be noted that initially in the year 2000, an NOC was granted by MHADA by which individual members which included in all 24 members, had decided to develop their property at their own costs and they were permitted to construct the row houses. The appellants had no money at that time and, therefore, naturally they could not get the benefit of the same. It is not in dispute that 70 per cent members gave their consent for redevelopment. As pointed out earlier, it is argued by Mr. Samdani that since 24 members had already developed their property on the basis of NOC given in the year 2000, they were not interested in redevelopment. If 70 per cent of the members gave the consent for redevelopment, which is the requirement of law, such redevelopment work should not be allowed to be delayed further. It is required to be noted that neither Mr. Bhatt nor Mr. Naidu has challenged the said decision during the course of their arguments. However, it is pointed out to the Court by the learned counsel for respondent No. 1 that some members went before the Registrar that the meeting was convened by the Committee whose term was over. It is also pointed out that thereafter the Registrar also by his order dated 7th April, 2010 clarified that if any policy decision is required to be taken pursuant to the order of the Supreme Court, such decision can be taken in such meeting but no further policy decision may be taken in future. It is required to be noted that there was no challenge to the subsequent meeting before the learned single Judge nor any argument was advanced by the learned counsel appearing for the appellants. During the course of hearing, it was only the other side had pointed out this aspect and the Court has examined this aspect. Be that as it may, it cannot be disputed that more than 70 per cent members comprising of total members have given their no objection to the redevelopment. This aspect as such is not in dispute but a feeble attempt was made by the learned counsel for the appellants that perhaps consent given by the members may not be a genuine consent. Without any material on this aspect, we cannot examine the same by holding that the consent given by the members may not be a genuine consent.

16. Considering the said aspect, when majority of members have decided to go for redevelopment and considering the interim protection about the transitory accommodation which respondent No. 2 has agreed to provide, it cannot be said that the action of the society regarding developing the remaining chawls is illegal or arbitrary in any manner. As pointed out earlier, initial NOC granted by MHADA

was of the year 2000 and based on which development work has already carried out by the individual members from their own money. The remaining members who are financially not sound, decided for carrying out the development work with the help of financial assistance of a developer and on that basis the development agreement has been entered into and as such the same is not required to be halted now only at the instance of few members. Till the work is over they are also going to be given transitory accommodation. Mr. Bhatt, during the course of hearing, pointed out that regarding transitory accommodation, there is no grievance on the part of the appellants. However, it is submitted by Mr. Bhatt that as per the original NOC granted in the year 2000, it is clear that unless all the occupants of the chawl holders vacate, it is difficult to carry out the redevelopment work. It is, therefore, submitted that even if few members have vacated their premises, yet development work cannot be allowed to be proceeded with.

17. It is also required to be noted that the Co-operative Court as well as the Appellate Court and the learned single Judge all found that no case has been made out by the appellants for objecting development of the chawls in question. It is not in dispute that the chawls are in a dilapidated condition and if any untoward things happen, it may fall down and some innocent may lose their lives. When a specially constituted body i.e. MHADA has considered the requisite membership, the said decision is not required to be delayed further in view of the fact that those who have already vacated the premises with a hope that within short time they will get newly constructed premises may not get the same within a reasonable time.

18. As pointed out earlier, the main grievance of the appellants was that in a newly constructed premises they may not get requisite area which otherwise they are entitled to. Whether the additional area is available to the appellants or whether any individual is entitled to the additional area, additional FSI is the question which is required to be decided by the fact finding Court i.e. Cooperative Court. The said issue can be decided in the pending dispute. We have recorded the statement of the learned senior counsel Mr. Samdani and Mr. Dhakephalkar that they will abide by the decision of the Co-operative Court, in case the Co-operative Court allows the dispute and no equity shall be claimed only on the ground that the construction is over and no additional space is available. Today, it is merely an assertion on the part of the appellants that they will be entitled to additional area and not 900 sq.ft. which is allowed to be given to them. Merely on simple assertion today we cannot restrain the further developmental activity. The learned single Judge also directed the Co-operative Court to decide the dispute on its own merit, without being influenced by prima facie Finding arrived at by the learned single Judge. In view of the above statement it cannot be said that few minority members have made out their prima facie case, yet we observe that in case the Co-operative Court decides in favour of appellants, respondent Nos. 1 and 2 to act accordingly and if any additional area is required to be made available, the same has to be made

available to them. In view of the same, we do not find any substance in the argument about challenge to the resolutions passed by the society in this behalf as ultimately it is the majority decision which prevails.

19. The next question is regarding challenge to the order of MHADA by which MHADA after hearing the concerned appellants have asked them to vacate the premises. As pointed out earlier, the MHADA is required to satisfy as to whether requisite majority has agreed for redevelopment and whether appropriate temporary accommodation is provided to the willing members. It is required to be noted that in the year 2000 NOC was granted as per the relevant rules prevailing at that time. The MHADA had granted permission for development as the premises belong to MHADA and the Society is only a lessee. The concerned 24 members have already constructed their own row houses by spending the money from their own pockets. Subsequently, the remaining members decided to develop their existing premises but without spending anything from their own pocket as they do not have any financial resources. On the basis of the same and on the basis of the resolution of the society and after having satisfied about the requisite membership, MHADA has taken a fresh decision which is a consequential decision in executing the resolution passed by the society for redevelopment. Considering the reasoning given by MHADA in their detailed order dated 11th January, 2011, we are of the opinion that no fault can be found with the decision taken by MHADA. At this stage, reference is required to be made to section 95 of the Act of 1976 which provides as under :

95A. Summary eviction of occupiers in certain cases.- (i) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of that building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupant to vacate the premises as provided in subsection (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

The relevant provision of Development Control Regulation 33 (5) provides as under:

In any Redevelopment scheme where the Co-operative Housing Society/ Developer appointed by the Co-operative Housing Society has obtained No Objection Certificate from the MHADA/Mumbai Board thereby sanctioning additional balance FSI with a consent of 70% of its members and where such NOC holder has made provision for alternate accommodation in the proposed building (including transit accommodation), then it shall be obligatory for all the occupiers/ members to participate in the Redevelopment Scheme and vacate the existing tenements for the purpose of redevelopment.

In case of failure to vacate the existing tenements, the provisions of section 95A of the MHADA Act mutatis mutandis shall apply for the purpose of getting the tenements vacated from the non co-operative members.

20. Even today, by way of subsequent resolution, majority of the members have decided to go in for redevelopment. MHADA has considered the objections raised by the concerned parties as also the objection of the non-co-operative members to the fact that section 95A of the Act of 1976 pertains to tenanted and dilapidated buildings. It has been held by MHADA that 75 per cent of the members have already given their consent for reconstruction. The summary eviction is only for the purpose of redevelopment of the building. The premises in question undisputedly belong to MHADA and the same have been given to the society on lease. It has also been held by MHADA that the grievance of the non-operative members that they have been given only 900 sq.ft. cannot be examined by MHADA as it is not the competent authority to decide and it is for the Cooperative Court to decide the same. The MHADA has also considered the Division Bench judgment of this Court dated 12th March, 2010 passed in Appeal (L) No, 86 of 2010 wherein it is held that the modified DCR 33 (5) is applicable even to those cases where NOC has been issued prior to 6th December, 2008.

21. Considering the said aspect, we do not find any justification to the challenge made to the decision taken by MHADA and the learned single Judge has rightly negated the said contention. However, we once again clarify that whether the appellants are entitled to more than 900 sq.ft. area is a question which can be decided by the Co-operative Court after hearing both the sides and in case it is held that the appellants are entitled to more than 900 sq.ft. area, respondent Nos. 1 and 2 to act accordingly and to provide additional area to the appellants for which they assured before us that the decision so rendered by the Co-operative Court will be honoured. This point is kept open for the consideration of the Co-operative Court before whom dispute is pending.

22. Learned counsel for the appellants, however, has relied upon the decision of the Supreme Court in the case of Julien Educational Trust Vs. Sourendra Kumar Roy and Others, . In the said case, the question of granting interim injunction was under consideration. Considering the nature of the suit, the Supreme Court prima facie found that if injunction is not granted, the plaintiff subsequently cannot be compensated in terms of money. So far as the facts of the present case are concerned, from the material placed on record and considering the scheme of the Act and the D.C. Regulation, we are of the opinion that the appellants have failed to make out a prima facie case to get absolute injunction as prayed for. It is required to be noted that in case ultimately the dispute before the Co-operative Court is dismissed, the entire development work will be paralysed for years to come and those members who have already vacated the premises with a hope that they will get newly constructed premises will suffer irreparable loss. The respondent No. 2 also will be required to pay for a long period for the transitory accommodation, if development work is paralysed. If the appellants succeed in the dispute before the Co-operative Court, in view of the statement made by the learned senior Counsel Mr. Samdani and Mr. Dhakephalkar, which we have recored above in the form of an undertaking, that the appellants can very well be adequately compensated by way of additional area as stated above. Considering the totality of the facts and circumstances of the case, in our view, this is not a case in which the orders passed by the learned single Judge as well as both the Courts below are required to be interfered in this appeal especially when majority of the members have subsequently given their consent for development and only two members form chawl No. 19 and six members from other chawls are objecting the redevelopment. The appellants may accordingly shift to the transit camp accommodation and the moment redevelopment is over, and as per the agreement it is to be completed within 24 months, the appellants along with other members should be provided the newly constructed premises, subject to their right to get additional area in case they succeed before the Co-operative Court.

23. In view of what is stated above, we do not find any substance in this Letters Patent Appeal and no interference is called for against the order passed by the learned single Judge as well as the orders passed by both the Courts below i.e. Co-operative Court and the Co-operative Appellate Court. The Letters Patent Appeal and the Civil Application are accordingly dismissed.

24. At this stage, learned counsel appearing for the appellants requested that six weeks stay of this order be granted in order to enable the appellants to move the Supreme Court. This is opposed by other side on the ground that since 2008, the redevelopment work has been halted and those people who are already vacated may suffer because they may not be able to get the newly constructed premises within a reasonable time. In our view, request on the part of the appellants is reasonable. The MHADA is directed not to enforce the eviction order upto 15th September, 2011 to enable the appellants to approach the Supreme Court against the present order.