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(2011) 06 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 924 of 2011

Sajid Abdul Sattar Urankar and Others — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Housing and Area Development Act, 1976 — Section 95A, 95A(2)
Maharashtra Regional and Town Planning Act, 1966 — Section 37(2)

Citation : (2011) 7 ALLMR 709 : (2011) 5 BomCR 408 : (2011) 5 MhLj 131

Hon'ble Judges : D.Y. Chandrachud, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Kevic Setalvad and Ivor Peter D''cruz, for the Appellant; G.W. Mattos, AGP for Respondents 1 to 4, S.M. Modale, for Respondent No. 5, D.D. Madon J.P. Sen, instructed by y., Dastur Dadhich and Kalambi for Respondents 6 to 10, for the Respondent

Judgement

D.Y. Chandrachud, J.—The ten Petitioners before the Court have challenged in these proceedings under Article 226 of the Constitution a scheme for redevelopment under DCR 33(7) which has been sanctioned by Maharashtra Housing and Area Development Authority (MHADA). The Petitioners are occupants of a cessed structure on CS 1101, 2931A Khandia Street of Byculla Division in the "E" Ward of Mumbai. MHADA has granted its NOC on 4 November 2009 for redevelopment. MHADA has since permitted a composite redevelopment of two adjacent properties, CS 1101 and CS 1102 under DCR 33(7). There were seventeen tenants/occupants on CS 1101, while there were eighty eight tenants/ occupants of CS 1102. All the occupants of CS 1102 vacated their structures, while out of the seventeen occupants of CS 1101, seven have vacated. Only the ten Petitioners remain. In the meantime, development has commenced and construction has proceeded up to the fifteenth floor. The AGP has informed the Court that MHADA permitted the amalgamation of CS 1101 and CS 1102 on 5 January 2010 so as to facilitate a composite redevelopment; and the Municipal

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Corporation sanctioned the amalgamation of the two properties on 8 October 2010.

2. The basic grievance of the Petitioners, during the course of the hearing, was that they had not furnished their consents to the scheme for redevelopment. The Executive Engineer of the Repair Board passed an order on 1 June 2011 dealing with the grievance of the Petitioners that they had not furnished their consents. The Executive Engineer noted that before issuing an NOC for its redevelopment, his office has verified the consents and that at the time of verification, the tenants had signed their consents once again. Moreover, the proceedings are stated to have been video recorded. Accordingly, notices were issued u/s 95A of the MHADA Act, 1976 to the Petitioners to vacate their structures.

3. Each of the Petitioners is to be allotted permanent alternate accommodation admeasuring 300 sq.ft in the newly constructed building free of cost. The Petitioners are presently in occupation of areas less than 300 sq.ft. Under DCR 33(7) they would be allotted an area of 300 sq.ft. The contention of the Petitioners that they had not consented to the redevelopment scheme is opposed by the Respondents. The developer who filed an affidavit has deposed to the process that was followed in recording the original consents and in the process of reverification. The AGP appearing on behalf of the MHADA has also stated before the Court that even after the original notarised consents are produced before MHADA, the Authority follows the procedure of reverifying the consents in the course of a site inspection and that each of the occupants is required to sign the photocopy of the agreement before the concerned Officer.

4. On behalf of the Petitioners, it has been urged that six out of the seventeen occupants of the structure comprised in CS 1101 would have to be excluded from the list of consenting persons since no verification was carried out by MHADA of their consents. This submission was sought to be supported on the basis of Exhibit "B" to the affidavit of the developer (Respondent No. 8) which is a statement containing the list of tenants together with the status of their consents in regard to the redevelopment of the property. Hence, it has been urged that if those six members were to be excluded, the project would not meet the requirement of receiving the consents of seventy percent of the existing tenants/ occupants.

5. In the present case, the properties comprised in CS 1101 and CS 1102 are being redeveloped under DCR 33(7) as part of a composite project. Amalgamation of the two plots has been sanctioned. Since the project is being treated as a composite project of redevelopment, the total number of occupants involved is 105, comprised of 88 occupants of CS 1102 and 17 occupants of CS 1101. None of the occupants of CS 1102 has made any complaint and, as a matter of fact, all of them have shifted out of their erstwhile tenements so as to facilitate the process of redevelopment. Similarly, 7 of the 17 occupants of CS 1101 have also shifted out. Therefore, even if all the 10 Petitioners were to be treated as persons who have not consented to the scheme for redevelopment

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that would not make any difference to the computation of the figure of seventy percent. Besides, senior counsel appearing on behalf of the developer points out that not all the 10 Petitioners were eligible occupants. In a judgment of a Single Judge of this Court (Smt. Ranjana Desai J.) in Fathima Michael Pillai v. Rajendra Rameshchandra Chaturvedi and Anr.1, the Court held that where three plots had been amalgamated the consent of seventy percent of all the tenants put together would have to be taken into consideration in order to satisfy the requirement of Section 95A(2) of the MHADA Act, 1976. Counsel for the Petitioners submits that for the purpose of DCR 33(7) each building must be considered separately and the consents of seventy percent of the occupants of every building must be taken separately. The submission cannot be accepted. Once there is an amalgamation of two properties, as in this case, a composite scheme of redevelopment is envisaged. Seventy percent of the tenants/occupants taken in the scheme as a whole must indicate their consents. The scheme is to enure to the benefit of the entire body of them. To require consents to be obtained individually for each building in a composite scheme will defeat the purpose of the scheme, besides being tardy. This will virtually amount to a veto being conferred on a small group of occupants to obstruct the scheme though the large body of them in excess of seventy percent has agreed. The island city of Mumbai has numerous congested areas where it is desirable in the interests of urban planning to execute composite redevelopment of adjoining properties. Where this is sought to be achieved, the requirement of seventy percent must apply to the occupants taken as a whole.

6. During the course of the hearing of the Petition, we were of the view that an attempt should be made to resolve the genuine grievances, if any, that the Petitioners may have. During the course of the hearing, counsel appearing on behalf of the Petitioners submitted that the Petitioners claim an additional area over and above 300 sq.ft that is being provided to them by the builder. This is on the basis that the Petitioners claim to be in occupation of an area in excess of 300 sq.ft. This claim of the Petitioners is seriously in dispute and the contention of the Respondents is that the Petitioners are in occupation of areas less than 300 sq.ft which would entitle them, therefore, to an area of 300 sq.ft as and by way of permanent alternate accommodation under the policy and Regulations. MHADA had already carried out a process of certification and the certified list of occupants together with the area in their occupation forms part of the record. Be that as it may, in order to obviate any grievance of the Petitioners in this regard, we had suggested to the senior counsel appearing on behalf of the developer and the AGP appearing for MHADA that a fresh measurement could be carried out of the areas in the occupation of the Petitioners so as to determine as to whether there is any error in the certification which is already carried out. This suggestion has been accepted by the developer and by MHADA. We, hence, direct that the tenements in the occupation of those amongst the Petitioners who have been certified to be eligible by MHADA shall be remeasured in the presence of the Petitioners on 29 June 2011 at 12 noon. In the event that any of the eligible

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occupants is found to be in occupation of an area in excess of what is certified already by MHADA, necessary correction shall be carried out by MHADA in the certified list and which would then form the basis of the allotment of permanent alternate accommodation by the developer. At the same time, we clarify that the certification of area would be on the basis of what is legally permissible. The AGP has stated before the Court that for instance, in the event that any of the occupants is found to have constructed an unauthorised loft, the area of such a loft is not taken into consideration while carrying out the certification.

7. The next grievance of the Petitioners related to the apprehension that the developer may not enter into registered agreements with the occupants. The AGP states that unless all the existing tenants/occupants are rehabilitated and registered agreements are entered into with them, MHADA shall not issue its NOC for the issuance of an occupation certificate in respect of the saleable component of the project. An assurance has been given to the Court on behalf of the developer that the developer would enter into agreements with the eligible occupants among the Petitioners on the same terms as would be entered into with all other tenants/occupants and that the agreements would be duly registered in accordance with law. The terms of the registered agreements shall be similar to those which have been entered with all other occupants and in the event of any difficulty, it would be open to the Petitioners to move the Chief Officer of the Repair Board for resolving the difficulty.

8. The Petitioners have stated before the Court, through counsel, that they would vacate the premises which are presently in their occupation on or before 2 September 2011. The undertaking which is tendered before the Court on behalf of the Petitioners, in the statement of the counsel, is accepted. Parties have agreed that before the Petitioners vacate their present premises, the developer shall pay to each of the eligible tenants/occupants in lieu of transit accommodation an amount computed at the rate of `10,000/per month (for those in occupation of tenements less than 200 sq.ft) and `12,000/per month (for those in occupation of tenements exceeding an area of 200 sq.ft). The developer has agreed to provide one years'' compensation in advance which shall be paid over prior to the date fixed for the handing over of the possession of the existing structures. Similarly, it has been agreed that the registered agreements shall be entered into prior to 2 September 2011 by which date the Petitioners have agreed to vacate the existing accommodation. Senior counsel appearing on behalf of the developer states that the advance towards the transit accommodation at the aforesaid rate shall be paid over together with the execution of the registered agreements.

9. Since the Petitioners have opted for payment of compensation in lieu of transit accommodation, it would not be necessary either for the developer or MHADA to provide transit accommodation to them. Senior counsel appearing on behalf of the developer states that payment had been made to MHADA towards transit accommodation including that for the Petitioners. Senior counsel states that an

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application would be made to MHADA for the refund of the deposit paid over in respect of the transit accommodation for the Petitioners which is not to be occupied by them, with effect from the date of this order. MHADA shall process the application in accordance with law and in the event that any refund is due and payable to the developer on account of the transit accommodation, MHADA shall pay over the proceeds after deducting such amount as may be due and payable by the developer.

10. The final grievance of the Petitioners is as regards the provision of a corpus by the developer in terms of a Notification dated 21 May 2011 issued by the Government of Maharashtra. By the said Notification, the State Government had sanctioned a modification to DCR 33(7) and has directed the Municipal Corporation to modify its regulations accordingly. At the present stage, the State Government has exercised its powers u/s 37(2) of the Maharashtra Regional and Town Planning Act, 1966, by making a modification to DCR 33(7). The Notification specifies that the date of the publication in the Government Gazette shall be the date of coming into force of the Notification. The developer has submitted that the Notification dated 21 May 2011 can have no application to the project in question which had already been sanctioned much prior to the date of the enforcement of the regulation. For the purposes of these proceedings, it is not necessary for this Court to go into the applicability of the Notification since we permit the Petitioners to make a representation in that regard to the Competent Authority who shall take a decision thereon.

11. The Petition stands disposed of in the above terms. There shall be no order as to costs.

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