2025 INSC 489

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No..... of 2025
(@ Special Leave Petition (C) No.29118 of 2024)

LAKHANI HOUSING CORPORATION PVT. LTD. & ANR.

APPELLANT(S)

VERSUS

THE STATE OF MAHARASTHRA & ORS.

RESPONDENT(S)

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. Leave granted.

2. Whether the e-tender issued by the Maharashtra Housing and Area Development Authority[1] in pursuance of a Cabinet decision, followed up with a government resolution, interferes with the contractual rights of the appellants is the question arising in the present appeal.

[1] MHADA

3. In a writ petition filed by the appellants before the High Court of Bombay, initially, stay was granted on the fundamental question of jurisdiction of MHADA to proceed with a cluster redevelopment in a land having an extent of approximately 11.20 acres, commonly known as '*Guru Tegh Bahadur Nagar*' (subject land, herein after) which is not owned by the State and lies as a free hold. The Division Bench of the High Court finally dismissed the writ petition which judgment is impugned in the present appeal.

4. On the undisputed facts, the High Court of Bombay noticed that the land once had 25 buildings standing on it, housing around 1200 families, the allotment having been originally made to the refugees from Pakistan. The buildings were 62 to 66 years' old, standing in an extremely dilapidated condition; classified as Category C-1 by the Brihanmumbai Municipal Corporation[2], which stood demolished in the year 2019 after proper notices were issued and proceedings taken under the BMC Act.

[2] The BMC

5. The appellants had approached the residents in the said building for redevelopment of the land and as per their claim, obtained agreements for redevelopment from individual members. The appellants had also spent around Rs.17.31 Crores in pursuing the initial steps for redevelopment. However, the redevelopment project did not fructify, according to the appellants, since the residents did not have proper title deeds despite Sanads being executed in their favour, between 1954 and 1987. It was the appellants who took steps to ensure proper conveyances, executed by the President of India, to be issued in favour of the families; the absence of which was the only reason for the development of land having not been taken up. It was contended that the MHADA could not have intervened with an e-tender based on the government resolutions; the Government having no rights over the land since the property was privately owned and did not belong to the State.

6. The High Court found that the writ petition is not maintainable, since, if at all, the recourse of the

petitioner was against the individuals who were the residents in the buildings demolished, with whom they had agreements. It was also found that the agreements claimed to have been executed by the individual residents were not registered and that, in any case, it would have to be established before a Civil Court. The Government decision to entrust MHADA with the development, eventually was on the request made by the majority of the residents who agreed to the development through the government nodal agency. The petitioners claimed an expenditure of Rs.17 Crores out of which Rs.9.35 Crores, expended as corpus funds to various occupants. On an examination of the development agreement, it was found that this would only indicate that the corpus fund was disbursed to only 267 occupants while the total residents came to 1200. The High Court found that the intention of the petitioner was to mislead the Court, with half-truths, partial truths and deliberate falsehood, that too in a writ petition which was not maintainable . The writ petition stood dismissed.

7. Before us, Mr. C. A. Sundaram, the learned Senior Counsel appearing for the appellant pointed out that the nature of lands subjected to development are categorised as free-hold, government owned properties and slums which fall under the Slum Regulatory Authority and MHADA. Regulation 33(9) of the Development Control and Promotion Regulations, 2034[3] deals with the development of such lands and in so far as privately owned lands, when the majority of the residents enter into a development agreement with a private developer, there cannot be a subsequent intervention by MHADA by floating a tender to develop the very same property on which there is an existing contract for redevelopment with a private developer; in the present case, the appellants herein. The majority of the residents as also the Societies had agreed to such development in pursuance of which considerable amounts have been spent by the developer and the conveyances facilitated to the residents, at the instance of the developer. The

[3] The DCPR

entire problem arose when an MLA wrote to the Government regarding the development of the subject land, which led to the Cabinet decision and the government resolution.

8. The Government also proceeded on the wrong assumption that the subject land belongs to the Government and, hence, MHADA could be authorised to carry out the redevelopment as per Regulation 33 (9) of the DCPR. The residents and the Societies, who had entered into development agreements with the appellants had first objected to it, but a *volte-face* was made for reasons best known to them. Presumably, on governmental influence and coercion, with the residents agreeing to the development by MHADA. It is vehemently argued that this goes against the consents issued by almost 909 out of 1200 occupants to the appellants herein. Mr. Sundaram pointed out that the new e-tender issued by the MHADA indicates that it is offering 635 sq. feet of built-up area to the residents, while the original agreement with the appellants was for

providing 550 sq. feet. It is undertaken that the appellants would provide the very same area as promised by MHADA i.e., 635 sq. feet despite an agreement to the contrary and this could allay any apprehension on the part of the residents.

9. Mr. Tushar Mehta, learned Solicitor General appearing for the MHADA submitted that no reliance can be placed on the unregistered agreements with individuals. MHADA is constituted and committed to prepare, execute, proposals, plans and projects for housing accommodation, clearances and redevelopment of slums in urban areas by demolition of dangerous and dilapidated buildings and their redevelopment through the statutory boards in terms of the MHADA Act, 1976. It is pointed out that even Regulation 33 (9) of the DCPR provides for the private land holders to enter into an agreement with MHADA and authorise development of their land at the instance of MHADA. It is only considering the requirement for redeveloping the subject land, where the residents were

evicted as early as in the year 2019 and buildings demolished that the Government proposes to take over the development through its nodal agency. The mere fact that the resolutions were taken on the basis that it is a government land would not affect the project at all, even if actually it is a free hold land.

10. The MHADA is authorised under Regulation 33(9) to intervene and facilitate redevelopment within a free hold land where the occupants consent to the same. The Maharashtra Regional and Town Planning Act, 1966, requires for such redevelopment, with consent of at least 50 % of the occupants in a building and 60 % of the cluster which is sought to be redeveloped. The appellants, who claim to have development agreements with the individual residents, have done pretty little in the last few years. The evicted residents are out on the streets and neither has the corpus fund, as agreed, disbursed to them nor have they been given transit accommodation or the rent as agreed upon. It is looking at the plight of more than ten thousand individuals

comprised in the 1200 families which were evicted from the buildings, which had to be demolished, with government intervention, MHADA was authorised to take over the redevelopment; which is also in public interest.

11. Mr. Shyam Divan, learned Senior Counsel appearing for the 17 out of the 25 societies, reiterated that the residents who are the members of the Societies are left to fend for themselves without the appellant having complied with any of the terms of the agreement, which in any way, have not been validly executed and does not subsist as of now. The appellant having not taken any legal steps to enforce their alleged rights under the agreement and are now indirectly attempting to thwart the redevelopment, as initiated by MHADA through a writ petition filed under Article 226 of the Constitution of India. The attempt is to by-pass the civil remedy and indirectly stall the e-tender and the redevelopment of the subject land and, thus attempting to coerce the residents to fall back upon the appellants.

The other Societies represented by learned Counsel supported the arguments of the learned Senior Counsel and pointed out that the governmental intervention was not by reason of a communication of the MLA; but 716 flat owners had already written a letter to the Housing Minister of the Government of Maharashtra on 05.09.2022, seeking intervention, long before the letter of the MLA dated 10.01.2023.

12. The thrust of the arguments of the appellant is on Regulation 33(9), the various categories of Cluster Development Schemes (CDS) contemplated by the said regulation and the nature of the agreements entered with the appellant as a private developer. Regulation 33(9) has been extracted in the impugned judgment and hence, suffice it to notice that the redevelopment, as envisaged by the DCPR, is by three modes, (i) undertaken by MHADA or the MCGM either by themselves or through a suitable agency, (ii) MHADA/MCGM, jointly with land owners and/or Cooperative Housing Societies of tenants/occupiers of

buildings and/or Cooperative Housing Societies of hutment dwellers and; (iii) where the land owners and/or Cooperative Housing Societies independently, by themselves carry out such development, or makes the development through a promoter/developer.

13. As far as the first category is concerned, the MHADA or the MCGM either by themselves or through an agency carries out the development, presumably, on government lands, with which we are not concerned. Indisputably, though the government resolution speaks of the subject land being owned by the government, it is a free hold land on which Sanads were obtained by the residents and later, proper conveyances were issued. In so far as the private lands are concerned, Regulation 33 (9) specifies that development on such lands can be either be carried out by the land owners or cooperative housing societies themselves or through a promoter or developer or even jointly with MHADA/MCGM. Hence, it cannot for a moment be said that on private lands, MHADA cannot at all enter and carry out a development.

The CDS, as envisaged under the DCPR specifically provides for the land owners or the housing societies to jointly carry out a development on free hold lands and in that circumstances, the e-tender issued by MHADA can neither be faulted nor can MHADA's initiative be termed as without jurisdiction. As of now, the housing societies and the residents of 25 buildings who are respondents herein unanimously support the redevelopment initiated by MHADA.

14. The initiative was entrusted to MHADA by the Government, as submitted by the respondents not merely by reason of the letter written by the MLA but also in furtherance of a communication issued by around 716 flat owners, pointing out their travails to the Housing Minister, Government of Maharashtra by letter dated 05.09.2022. Even otherwise, the MLA as is seen from the communication dated 10.01.2023, produced as Annexure A in IA No.291091 of 2024, only brought to the notice of the Deputy Chief Minister of the State, the difficulties faced by the constituents of his constituency;

in which exists, the *Guru Teg Bahadur Nagar,* which cannot be termed to be with any ulterior motive. The government resolution speaks of the said land as a government land; obviously a mistake, but that does not invalidate the decision taken. As is evident from Regulation 33 (9) of the DCPR , MHADA can jointly with the land owners or Cooperative Housing Societies carry out the development on free hold lands. The erroneous description of the said land i.e., as a government land, we find to be inconsequential.

15. MHADA cannot also be said to have no jurisdiction to implement a Cluster Development Scheme, in a free hold land, since it is made possible as per the DCPR, if it is carried out jointly with the land owners/ Cooperative Housing Societies. In the present case, at the risk of repetition, we have to emphasise that those Cooperative Housing Societies who are parties herein, in one voice support the intervention and initiative taken by MHADA.

16. Now, the question arises as to whether the appellants had valid contracts, infringement of which

will not be possible through an intervention made by MHADA to carry out development of the subject land. As admitted by the appellants the project for development of land was first suggested by the appellants in the year 2010. The admission made by the appellants is seen from Annexure R-5, produced in the counter affidavit filed by Respondent Nos.5 to 20 and 23; that the redevelopment process of the entire 25 buildings of the colony has been initiated by the appellants since the year 2012. Annexure R-5 is an objection addressed to M/s. Consultants Combined Architects on the e-tender issued for redevelopment of the *Punjabi Colony* in *Guru Teg Bahadur Nagar*. The fact remains that despite a decade and two years having passed, there is no construction activity started in the subject land.

17. The appellants have asserted that they have spent about Rs. 17 Crores which is not a matter to be merely asserted on affidavit and requires substantiation by proper evidence adduced in a civil suit. Here, it is also pertinent that the Division Bench of the Bombay High

Court found that even if the expenditure of Rs.9.5 Crores, disbursed as corpus fund is accepted, looking at the amount entitled to each of the occupants, only 217 persons would have been paid the said amount out of a total of 1200 persons.

18. In this context, we refer to Annexure P3, which is stated to be the resolutions of various societies, appointing the appellant as the developer. The appellant was preferred from among three bidders for reason of the higher area offered per flat, the rent of Rs.15,000/- per month offered for alternate residential arrangement and Rs.3,50,000/- per member, offered as corpus fund. The appellant does not have a case that either the corpus fund was paid to all the occupants or the rent disbursed on monthly basis for an alternative residential accommodation. In so far as the floor area is concerned, as we noticed, there is no construction on the land as of now. It is in this context, the MLA of the constituency in which the colony is located, and the majority of the residents of the 25 buildings, who were evicted by

demolition of the buildings in 2019, approached the government for an alternative arrangement, so that they can receive back, and shift into their own homes in, their free hold land.

19. In so far as the appellants' case is concerned, the appellants rely on the agreements entered into with various individual land owners and the permission obtained from some Societies. That by formulation of such Housing Societies, the majority decision would prevail cannot be disputed. The agreements executed with the land owners are said to be unregistered agreements, unenforceable in the eyes of law. We would however not make any declaration on that aspect since our finding, as found by the High Court of Bombay, is that the petitioners' remedy is not under Article 226. The appellants may have a remedy of specific performance which the appellants have not at all pursued as of now. In the guise of challenging the e-tender, the appellants have been attempting to enforce contractual rights as against the individual occupants

and also against the Societies. We make this observation without deciding on the validity or invalidity of such agreements; which the respondents asserted to be unenforceable. We have already found that the expenses asserted by the appellant in pursuing the agreements have not been substantiated in the writ proceedings, nor have they established that it is by their intervention the conveyances were facilitated. The appellant may have a remedy against the individuals or the Societies but the writ petition cannot be maintained as against the e-tender issued by the MHADA, especially when the Societies in one voice support the development initiative of MHADA; which is a joint venture as permitted by the DCPR.

20. The appellants have no locus standi to challenge the e-tender in a writ proceeding, when the redevelopment of the said land is carried out as a Cluster Development Scheme under the DCPR, which enables MHADA, jointly with the land owners/Cooperative Societies to carry out such development. The appellants

have failed to show us any vested right to carry out the development, especially when there is not even a registered agreement with any individual or the Societies. The very claim of the appellants based on the resolutions purportedly of the Societies clearly indicate that the promises made by the appellant were not complied with and the redevelopment also was not carried out within the time stipulated, leading to breach of any such agreement; if at all such agreements were valid and enforceable.

21. We find absolutely no reason to entertain the appeal, and dismiss it.

22. Pending applications, if any, shall also stand disposed of.

..... J.
(SUDHANSHU DHULIA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
APRIL 16, 2025.