

Bombay High Court

Sewri Cross Road Residents ... vs Municipal Corporation Of ... on 10 March, 2016

Bench: V.M. Kanade

1/15

WP/630/2015 WITH CHST/363/2014
WITH WP/2783/2015

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.630 OF 2015

1. Sanjary Co-op. Hsg. Soc.)
(Proposed))
Sewree Cross, Road,)

Near Sewree Dry Fish Market,)
R.A. Kidwai Marg, Sewree (West),)
Mumbai - 400 015)
)

2. Aslam Khan and Abdul Rehman)
Chief Promoter, ig)
Sanjary Co-op. Hsg. Soc.)
(Proposed))

Sewree Cross Road,)
Near Sewree Dry Fish Market,)
R.A. Kidwai Marg, Sewree (West),)
Mumbai - 400 015)

)
3. Feroz Abdul Sattar Dharajiwala)

Secretary,)
Sanjary Co-op. Hsg. Soc.)
(Proposed))
Sewree Cross Road,)

Near Sewree Dry fish Market,)
R.A. Kidwai Marg, Sewree (West),)
Mumbai - 400 015) Petitioners.

V/s

1. Municipal Corporation of)
Greater Mumbai,)
Through its Municipal)
Commissioner, Mahapalika Marg,)
Mahapalika Building,)
V.T. Mumbai 400 001)

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WP/630/2015 WITH CHST/363/2014
WITH WP/2783/2015

)

2. Dy. Municipal Commissioner,)
(Zone-II), M.C.G.M.,)

F/South Division, Parel,)

Mumbai - 400 012)

)

3. Dy. Municipal Commissioner)

(Improvements), M.C.G.M.,)

Mahapalika Marg, Mahapalika)

Building, V.T. Mumbai 400 001)

)

4. Asstt. Commissioner)

(Estates),M.C.G.M., ig)

MCGM Market Office Bldg.,)

FP No.232, TPS-III,)

Mapalawadi CHS Area,)

Sitaram Keer Marg,)

Matunga (West),)

Mumbai - 400 016.)

)

5. Asstt. Commissioner)

F/South, Jaggnath Bhatnkar Marg,)

Parel, Mumbai - 400 012)

)

6. Shankala Dream Realtors)

A.P. Swati Manor, Behind)

Cambrige Shop, N.C. Kelkar Road,)

Dadar (W), Mumbai - 400 028)

)

7. Rubberwala & Royal Developers)

Rubberwala Shelters,)
Opp. Agripada Police Station,)
Dr. A.N. Road,)
Mumbai - 400 011) Respondents.

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WP/630/2015 WITH CHST/363/2
WITH WP/2783/20

WITH

CHAMBER SUMMONS (L) NO.363 OF 2014
IN

WRIT PETITION NO.630 OF 2014

Maharashtra Rajya Machhimar)
Sahakari Sangh Ltd.)Applicant/Intervenor

In the matter of

Sanjary Co-op. Hsg. Soc.)

(Proposed) and Others)Petitioners.

V/s

Municipal Corporation of)

Greater Mumbai & Others) Respondents.

WITH
WRIT PETITION NO.2783 OF 2015

1. Sewri Cross Road Residents)

Welfare Association,)
Through its President)
Mr. Ahmed Rafique Dadan)
A registered association,)

Having its office at BMC Chawl)
No.6, Sewri Cross Road)
Sewri (W), Mumbai 400015)
)

2. Mohammad Salim Sheikh)
Adam, aged 53 years,)
Secretary of Petitioner No.1,)
BMC Chawl No.6, room No.71,)
Dry fish market, Sewri Cross)
Road, Mumbai - 400015) Petitioners.

V/s

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WP/630/2015 WITH CHST/363/2014
WITH WP/2783/2015

1. Municipal Corporation of)
Greater Mumbai)

Through the Commissioner,)
Mahapalika Building,)
Mahapalika Marg, Mumbai 1)
)

2. Royal Developers,)
a partnership Firm, having its)
office at 101, A Wing, Srushti)
Apartment, G.D. Ambekar Marg,)

Parel, Bhoiwada, Mumbai-400012)
)

3. Rubberwala Developers)ig
Rubberwala Shelters,)
Opp. Agripada Police Station,)

Dr. A.N. Road, Mumbai 11.)Respondents.

Mr. S.C. Naidu alongwith Mr. Aniket Poojari i/b C.R. Naidu & Co. for

the Petitioners in Writ Petition No.630 of 2015.

Mr. Mihir Desai, Senior Counsel alongwith Mr. Chetan Mali for the

Petitioner in Writ Petition No.2783 of 2015

Mr. S.U. Kamdar, Senior Counsel with Ms. Shobha Ajitkumar for

Respondent Nos. 1 to 5/BMC in Writ Petition No.630 of 2015 and for Respondent No.1/BMC in Writ Petition No.2783 of 2015.

Mr. Sanjay Jain alongwith Mr. Karan Vyas for Respondent No.6 in Writ Petition No.630 of 2015.

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WP/630/2015 WITH CHST/363/2015
WITH WP/2783/2015

Mr. Pravin Samdhani, Senior Counsel alongwith Mr. Chetan Kapadia,

Mr. Pratik Sakseria, Mr V.K. Merchant i/b Kishore Thakordas & Co. for Respondent No.7 in Writ Petition No.630 of 2015 and for Respondent Nos. 2 and 3 in Writ Petition No.2783 of 2015.

Mr. S. Wassoodew for Applicant/ Intervenor- Maharashtra Machhimar Sangh Ltd. in Chamber Summons (L) No.363 of 2014.

ig CORAM: V. M. KANADE &
B.P. COLABAWALLA, JJ.

DATE: 10th March, 2016 JUDGMENT: (Per V.M. Kanade, J.)

1. Heard the learned Counsel appearing on behalf of the Petitioners in Writ Petition No.630 of 2015, the learned Senior Counsel for the Petitioners in Writ Petition No.2783 of 2015, the learned Senior Counsel for Respondent No.7 in Writ Petition No.630 of 2015 and for Respondent Nos. 2 and 3 in Writ Petition No.2783 of 2015 as also the learned Senior Counsel for Respondent Nos. 1 to 5/Corporation in Writ Petition No.630 of 2015 and for Respondent No.1/Corporation in Writ

Petition No.2783 of 2015, the learned Counsel for Respondent No.6 in Writ Petition No.630 of 2015 and the learned Counsel for the Applicant/Intervenor in Chamber Summons (L) No.363 of 2014 in Writ Petition No.630 of 2015.

WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015

2. Since the Petitioners in both the aforesaid Writ Petitions are aggrieved by the same impugned orders, both these Petitions are being disposed of by a common judgment.

3. Petitioners in Writ Petition No.630 of 2015 are seeking the following reliefs:-

"(a) That this Hon'ble Court be pleased to issue a Writ in the nature of Certiorari or any other appropriate writ or Order or Direction under Article 226 of the Constitution of India directing the Respondent Nos. 1 to 4 and call for the files and records culminating in impugned communication No.A.C./Estates/12534/A.O.

Soc.-1/AE(Imp.)-II dated 22nd August 2014 and at Exhibit-NN hereto and after examining the legality, validity and propriety be pleased to quash and set aside the said communication;

(b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ or Order or Direction under Article 226 of the Constitution of India directing the Respondent Nos. 1 to 4 and call for the files and records culminating in impugned communication No. A.C. /Estates / 11509/A.O. Soc.-2AE(I)-I dated 12th August 2014 and at Exhibit-MM hereto and after examining the legality, validity and propriety be pleased to quash and set aside the said WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 Annexure-II in respect of Plots C.S. Nos.

231(Part), 446, 450, 453, 454, 455, 456, 457 to 472, 1/472, 473, 474, 475, 699 & 776 (Patta - B);

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ or Order or Direction under Article 226 of the Constitution of India directing the Respondent Nos. 1 to 4 to scrutinize the redevelopment proposals dated 25th April, 2006 and 18th July 2008 submitted by Petitioner No.1 society and take all necessary steps for issuing Annexure-II, in favour of Petitioner No.1 society in respect of Plot No. CS Nos.231(Part), 446, 450, 453, 454, 455, 456, 457 to 472, 1/472, 473, 474, 475, 699 & 776 (Patta - B) within 30 days from date of order;

(d) That Pending the hearing and final disposal...

(e).....

(f)....."

4. Petitioners in Writ Petition No.2783 of 2015 are seeking the following reliefs:-

"a) For a Writ of Certiorari or a Writ, order or Direction in the nature of Certiorari or any other appropriate writ, order or direction quashing and setting aside the Annexure II dated 12.8.2014 and permission dated 26.8.14 alongwith all other permissions which may have WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 been granted for developing Patta No.B, Sewri Cross Road, F South Division, Sewri (West), Mumbai - 400 015.

(b) Pending the hearing and final disposal....

(c).....

(d).....

(e)....."

5. Brief facts which are relevant for the purpose of deciding these Petitions are as under:-

6. Respondent - Corporation owns a large parcel of land at Sewree Mumbai, which is known as Municipal Estate, Sewree. It is divided in to three distinct Pattas. Thus, there are three Pattas viz. 'A', 'B' and 'C'.

Both these Petitions are concerned with Patta 'B' lands.

7. In Writ Petition No.630 of 2015, it is contended that Petitioner No.1 - Sanjary Co-operative Housing Society (Proposed) consisted of occupants of structures located on the properties owned by the Municipal Corporation of Greater Mumbai, known as Patta 'B' properties, whereas Petitioner No.1 in Writ Petition No.2783 of 2015 was also a proposed Society of occupants which was formed in the year 2004 and is known as Sewri Cross Road Residents Welfare Association. There are two other Societies on the said lands viz. Green Maharashtra Co-operative Housing Society and Eklas Co-operative Housing Society. Each of these Societies had given a proposal for WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 redevelopment under Regulation 33(7) of the Development Control Regulations, 1991 ("D.C. Regulations") and each Society claimed that it had obtained consent of 70% of its members.

8. In Writ Petition No.630 of 2015, Petitioners' case was that their Society was established first in 2004 and their application for allotment was not being processed by the Corporation. They,

therefore, filed a Writ Petition No.1292 of 2009 and Division Bench of this Court in the said Writ Petition directed the Corporation to process their application. The Corporation, pursuant to the directions given by this Court, processed all the applications and came to the conclusion that Respondent No.7 had established that it had obtained the consent of 70% members and therefore permitted Respondent No.7 to redevelop the entire plot known as Patta 'B'.

9. Petitioners, being aggrieved by the said impugned orders have filed both these Petitions, challenging the orders and decisions passed by the Corporation.

10. Mr. Naidu, the learned Counsel appearing on behalf of the Petitioners in Writ Petition No.630 of 2015, submitted that the directions given by this Court have not been scrupulously followed by the Corporation. He submitted that Petitioner No.1 - Sanjary Co- operative Housing Society (Proposed) had filed consent of 70% of its members and the consent given by some of the members was not WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 scrutinized. Secondly, it was submitted that it was incorrectly observed in the impugned order that the Developer of Sanjary Co-

operative Housing Society had withdrawn its proposal. He submitted that despite directions given by this Court to Respondent No.7 and to the Corporation to produce the letter of withdrawal of proposal by Developer of the said Society, no such letter was produced. He submitted that the Petitioners came to know about the said alleged withdrawal only after the impugned order was communicated to them.

He submitted that the Society was entitled to redevelop the said plot and an opportunity ought to have been given to the Petitioners to establish their 70% strength. He submitted that therefore the record was fabricated by the Corporation only in order to favour Respondent No.7. He then pointed out that the order could not have been passed in favour of Respondent No.7 because, firstly, Respondent No.7 did not have the adequate number of members with them and, secondly, Petitioner No.1 had submitted 178 consent letters in the new format and, therefore, re-development rights could not have been given in favour of Eklas on the basis of the impugned communication dated 22/08/2014. It was then submitted that the consent tendered by the Petitioners was prior in point of time and the consent was irrevocable and hence the fresh consent could not have been accepted on 18/06/2014. It was again submitted that the Corporation had wrongly held that Respondent No.6 had withdrawn its proposal. It was submitted that this remark was false and this was evident from the Petitioners' letters dated 28/8/2009, 15/2/2009, 24/2/2009 and WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 15/6/2010.

11. On the other hand, Mr. Samdhani, the learned Senior Counsel appearing on behalf of Respondent No.7, submitted that the members of the Committee which had processed the applications of the proposed Societies were high ranking Officers working in the Corporation and no allegations of malafide were levelled against any of the members of the said Committee. He submitted that the said Committee scrutinized the applications according to the norms laid down by the Corporation in its Circular dated 05/05/2012. He submitted that the Scheme under Regulation 33(7) envisaged that only tenants of Municipal Corporation could submit the Scheme under Regulation 33(7). He submitted that the Scheme submitted by the Sanjary Co-operative Housing

Society and other Societies consisted of occupants who were not tenants of the Municipal Corporation and, as such, the consent given by such unauthorized occupants who were not tenants of the Corporation could not be taken into consideration for the purpose of calculating 70% members who had given their consent. He submitted that Respondent No.7 had established that it had obtained consent of 70% of tenants of Municipal Corporation and therefore permission to redevelop was correctly granted to Respondent No.7. He invited our attention to a detailed affidavit-in-reply filed by Respondent No.7 and pointed out that, in fact, Petitioner No.1 - Sanjary Co-operative Housing Society was aware about withdrawal of the proposal by their Developer in 2009 itself. He invited our WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 attention to the letter written by the Petitioners in which there is a clear reference of withdrawal of proposal by their Developer.

12. Mr. Kamdar, the learned Senior Counsel appearing on behalf of the Corporation, submitted that the entire procedure had been followed and all the proposals were scrutinized as directed by this Court. He submitted that after scrutinizing all the proposals, it was found that Respondent No.7 had obtained consent of 70% of members and that other Societies had amalgamated with Respondent No.7. He submitted that even those occupants who were not tenants of the Corporation but were unauthorized slum dwellers on the property would be entitled to be rehabilitated in accordance with the Scheme. He submitted that Respondent No.7 had given proposal under DCR 33(7) and DCR 33(9).

13. After having heard all the parties at length, we are of the view that there is no substance in the submissions made by Mr. Naidu, the learned Counsel appearing on behalf of the Petitioners in Writ Petition No.630 of 2015. The impugned order by which Annexure-II was finalized clearly reveals that thorough investigation was made by the Committee which consisted of high ranking Officers of the Municipal Corporation. So far as redevelopment under DCR 33(7) is concerned, only tenants of the Municipal Corporation are entitled to give their consent for redevelopment under the Scheme. The record clearly indicates that after scrutinizing the consent given by the Petitioners WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 and the other Societies, the Committee came to the conclusion that only Respondent No.7 had established that it had obtained consent of 70% of the municipal tenants. Large number of members of the Petitioner No.1 - Sanjary Co-operative Housing Society were slum dwellers and unauthorized occupants and therefore they were not eligible under the Scheme under DCR 33(7) of the D.C. Regulations.

14. It was very strenuously urged by Mr. Naidu, the learned Counsel for the Petitioners in Writ Petition No.630 of 2015 that the Committee which had scrutinized the applications had wrongly observed that the Developer of Petitioner No.1 - Sanjary Co-operative Housing Society had withdrawn its proposal. He submitted that the order permitting withdrawal of the proposal by the Developer of Petitioner No.1 was never produced before this Court. This submission is without any substance. There is material on record which indicates that, firstly, Petitioner No.1 - Sanjary Co-operative Housing Society was aware that their Developer had withdrawn its proposal in 2009. In a letter written by Petitioner No.1 - Sanjary Co-operative Housing Society, there is a clear reference of the withdrawal of the proposal by their Developer. It is therefore not now open for the Petitioners to contend that their Developer had never withdrawn the proposal. It is pertinent to note

that Developer of the Petitioners who is Respondent No.6 has not filed affidavit-in-reply, stating therein that it had not withdrawn the proposal. Respondent No.6, therefore had advisedly not made any statement on oath. Apart from that, the Committee, after scrutinizing WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 all proposals, came to the conclusion that the Petitioners had not established that 70% of the members/tenants were with them and not with Respondent No.7. The Committee, therefore, had rightly observed that the proposal of the Petitioners was recorded. Apart from that, all the questions which are raised by the Petitioners are disputed questions of fact which cannot be decided by this Court while exercising its writ jurisdiction under Article 226 of the Constitution of India. This Court therefore only will have to see whether the procedure prescribed under the Circular was followed by the Committee. Perusal of the impugned order clearly reveals that all steps were taken to scrutinize all applications and this verification was carried out at various levels and only thereafter final Annexure-II was issued and the final order was passed in favour of Respondent No.7

15. We therefore do not see any infirmity in the order passed by the Committee of the Corporation. We are not inclined to interfere with the said order while exercising our writ jurisdiction under Article 226 of the Constitution of India.

16. Writ Petition No.630 of 2015 is accordingly dismissed.

17. So far as Writ Petition No.2783 of 2015 is concerned, the Petitioners in the said Writ Petition have challenged Annexure-II which was issued. It is pertinent to note that the Petitioners in the said case had given consent and were signatories to the said consent WP/630/2015 WITH CHST/363/2014 WITH WP/2783/2015 given to the successful Developer. A detailed affidavit-in-reply has been filed by the Respondents in the said Petition and the allegations made by the Respondents in the said affidavit-in-reply against the Petitioners have not been controverted by the Petitioners by filing rejoinder. There is therefore no substance in the submissions made by Mr. Mihir Desai, the learned Senior Counsel appearing on behalf of the Petitioners in the said Petition.

18. Writ Petition No.2783 of 2015 is therefore dismissed in limine.

19. Applicant - Maharashtra Rajya Machhimar Sahakari Sangh Ltd has taken out Chamber Summons (L) No.363 of 2014 in Writ Petition No.630 of 2015 for impleading the Applicant/Intervenor as party respondent in the said Petition. Applicant/Intervenor has already filed a suit in the City Civil Court and the said suit is pending.

Applicant/Intervenor can always pursue its remedy which is available to it and therefore Applicant/Intervenor is not a necessary and property party in the said Petition. Chamber Summons is accordingly dismissed.

20. Both these Writ Petitions and the Chamber Summons are disposed of.

(B. P. COLABAWALLA, J.)

(V.M. KANADE, J.)

