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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 108 OF 2021

Chirag Infra Projects Pvt Ltd …Petitioner
Versus
Vijay Jwala Coop. Hsg Soc Ltd & Anr …Respondents

Mr Amogh A Singh, *with Bhavin R Bhatia, Rohit Yadav & Moksha M Doshi, for the Petitioners.*
Mr Amol Joshi, *with Vinod Rane, i/b Rane & Co, for Respondent No. 1.*
Ms Divya B Parmar, *for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 12th March 2021

ORAL JUDGMENT:-

1. This is the usual story of a solitary member of a society obstructing the redevelopment of the society building. It does not matter to this member that the building is in a dilapidated condition unfit for human habitation. It does not matter to him that the building has been declared as such by the Planning Authority and categorized as a 'C1' building. It does not matter to that dissenting member that the building now poses a risk to all occupants — including the dissenting himself — and, in addition, others in the

vicinity. It also does not seem to matter to this member that his actions come at the very real cost of other member of the society, all 19 of whom have vacated their premises as far back as in November 2018.

2. As we shall presently see, the facts behind the 2nd Respondent's persistent obstruction for the last six years are beyond shocking. The 2nd Respondent imagines that it is only he who can tell right from wrong, that it is only he who knows what is good for all, and that he is entitled without any assumption of liability to continually obstruct this redevelopment, put his fellow members at risk and continue in this fashion. The 2nd Respondent also imagines that he can continually obstruct implementation of the re-development project although court after court after court has refused to grant him relief. It matters not a whit to his reasoning — or the conspicuous lack thereof — that he has never once assailed the Society's resolution regarding re-development or the re-development agreement itself. To a question whether he has obtained any order at all either staying the general body resolution, or declaring the redevelopment agreement in question null and void, the only answer I received is 'not yet'. Presumably, this means that not only the Court but the developer and more importantly the fellow members of the society — the 2nd Respondent's neighbours — must wait for an eternity until the 2nd Respondent has his own way.

3. The 2nd Respondent is wrong on every single aspect of the matter. The 2nd Respondent is entirely in error in believing that no action can be taken and that he is protected or insulated from the

operation of law. The 2nd Respondent is equally wrong in believing that he can continually evade liability or that he can avoid his responsibilities as a member of the 1st Respondent society.

4. The facts are not many. This is how they unfold. The 1st Respondent society owns a building at Building No. 8, Survey No. 1061 (part), CTS 217 in the revenue village of Shastri Nagar, Pahadi Goregaon. On this land there stood a building known as Vijay Jwala. It has 20 tenements. The only tenement still in occupation is the one in which this 2nd Respondent, Kondvilkar, resides with his wife. The Society (the 1st Respondent) resolved on 7th September 2014 to redevelop Vijay Jwala. A Development Agreement followed on 16th December 2015. A copy of this agreement is annexed at Exhibit 'H'. It is duly stamped and registered. It contains a provision for arbitration reproduced at page 73 in clause 39, which says that any disputes are to be referred to arbitration under the Arbitration and Conciliation Act 1996. For a correct understanding, I will have occasion to return to this development agreement a little later in this order.

5. To complete the factual narrative, this property being on MHADA land, it required a no objection certificate from MHADA. This came on 2nd August 2019, but it was just a year after a structural audit by the Municipal Corporation of Greater Mumbai on 16th June 2018 declaring the building in the 'C1' category, i.e., as unsafe and unfit for human habitation.

6. The 2nd Respondent has from the beginning opposed the reconstruction. As I understand it, he says that the entire proposal is for some reason 'illegal'. The point that is being urged is that the building was meant for persons from the lower income group and, therefore, permission of or from the Social Welfare Department was essential and was a requirement. This not having been obtained, the entire agreement is illegal, null and void. That is the whole of the submission. It is not demonstrated anywhere how the SWD has the power or authority in law over development projects under the Maharashtra Regional & Town Planning Act, 1966 or under the Mumbai Municipal Corporation Act, 1888. It is not shown that the SWD is, in any way, a 'Planning Authority' under the town planning statute or that it has the power to veto, stop or stall any development or re-development project.

7. At some point, having regard to this obstruction, MHADA passed an order under Section 95A of the MHADA Act on 17th October 2018 against Kondvilkar. This provides for summary eviction of occupants in certain cases. The section says:

> 95-A. (1) 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 occupiers, 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 sub-section (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**.
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> (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.
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> **(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.**
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> (*Emphasis added*)

8. Kondvilkar incurred the liability and penalty set out in sub-section (4) when he refused to vacate and obstructed the eviction. He challenged that order in a civil suit in the City Civil Court but was denied any relief by an order dated 25th October 2019. Against this, he presented an Appeal from Order to this Court. That Appeal from Order has been admitted but no interim relief was granted in the order of 20th November 2019.

9. Between 16th December 2015 and today, the developer has spent a total of about Rs. 6.20 crores already; and yet the building has not been demolished — only for want of eviction of Kondvilkar. Finally, the developer invoked arbitration on 5th October 2020 and then filed this Petition.

10. Mr Singh for the developer makes a statement that the developer has obtained transit accommodation and fully paid up the license fee in respect thereof. Once he vacates, Kondvilkar Respondent will be accommodated in the transit premises until redevelopment is complete. Alternatively, at his option, he will be given transit rent with which he can take up temporary premises of his own choosing. Kondvilkar will, in all matters, and at all times, be treated on parity with all other members of the society. He will be denied not a single benefit of the re-development. He will be put in possession of his allotted flat in the redeveloped building after the occupation certificate has been obtained.

11. Notably, Mr Singh point out that even until date in the various cases and proceedings that he has filed — and of these there are apparently no less than 13, many are directed against public officials, some invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — has Kondvilkar ever challenged the Development Agreement itself or, for that matter, the Society's resolution.

12. This in itself is startling. The Society's general body resolution is a foundational document. Without that resolution of

the society, and the assent of the requisite minimum of 70% of the occupants, the Development Agreement could never have come into being. This brings the matter entirely within the ambit and subject to the discipline of the Maharashtra Cooperative Societies Act, 1960. That rigour and discipline say that every member is subject to the decision of the society, whether or not he agrees with it. Decisions taken by a majority bind all. The law, as we shall shortly see, is that the member loses his individual identity upon becoming a member, and his identity is subsumed within the society of which he is a member. This is an incident of society membership controlled by the Cooperative Societies Act. A person cannot both claim the benefits of membership and yet deny the authority of the general body of the society to bind that member by a decision taken by majority in a properly convened meeting. If the meeting is irregular, illegal or unlawful a member has his remedies and avenues of recourse under the Cooperative Societies Act. It is simply not possible for a member of the society to disobey, disavow or flout openly taken decisions of the general body of the very society of which he claims to be a member.

13. The relief sought in the Section 9 Petition at page 24 are these:

> "(a) That pending the commencement, hearing and final disposal of the Arbitral proceedings, this Hon'ble Court be pleased to order and direct the Respondent No. 2 to handover the Petitioners vacant and peaceful possession of their Flat No. 145 occupied by the Respondent No. 2 situated in the building of the Respondent No. 1 Society standing on the subject property described in Exhibit – A

hereto, so as to enable the Petitioners to commence work of demolition;

(b) In the alternative to prayer clause (a), pending the commencement, pending the hearing and final disposal of the Arbitral Proceedings a Court receiver, High Court, Bombay or any other fit and proper person as a Court Receiver be appointed with respect to the Flat No. 145 of Respondent no.2 with all powers under Order XL Rule I of the Code of Civil Procedure, 1908 including the power to take physical possession of the Flat No. 145 of the Respondent no. 2 situated in the Respondent no. 1 Society's building standing on the subject property described in Exhibit – A hereto for redevelopment of the subject property with a further direction to take physical possession of the Flat No. 145 from the Respondent no. 2 with the help of police if necessary by braking open the door and handover the vacant possession of the above respective Flat premise of thee Respondent no. 2 to the Petitioner to enable the Petitioner to demolish the same.

(c) That pending the commencement, hearing and final disposal of the Arbitral proceedings, the Respondent No. 2 bee restrained by an order and injunction of this Hon'ble Court from dealing with, transferring, encumbering and/or creating any third party rights of any nature whatsoever with respect to this Flat No. 145 occupied by him situated in the building of the Respondent no. 1 society standing on the subject property described in Ex. A hereto in any manner whatsoever."

14. Obviously these are drastic prayers. Twice in Court today, I asked Ms Parmar, the learned Advocate for the 2nd Respondent, to explain to Kondvilkar, who is also present, that if he indicated a date by which he would vacate, I would make an order not only holding

the developer to the assurances Mr Singh gives, but also afford the 2nd Respondent even more additional time to vacate. The answer I have got, repeatedly, is that Kondvilkar is unwilling to vacate under any circumstances. Then I am told that he needs more time although this matter has been pending since December 2019 or January 2020. I am told that he needs to consult his son — who does not stay with him — because other arrangements will need to be made. But that statement is also incorrect, because the other arrangements have indeed already been made, for the developer has fully paid up for alternative premises to which the 2nd Respondent can move at very short notice. It is the 2nd Respondent who through his own acts leaves almost everybody around him (including, I am sorry to note, Ms Parmar, who, despite her best efforts is severely handicapped by the instructions she receives) from doing the right thing without precipitating a completely unnecessary confrontation. Kondvilkar believes that this can be dragged on indefinitely. He is once again wrong. There must come a time when somebody must say now enough is enough. Today is that day.

15. There are Affidavits filed up to the stage of Rejoinder. Yesterday I declined to permit a Sur-Rejoinder. Mr Singh gave me two compilations (not written submissions) of authorities. This is decided case law. The first of these compilations had in fact been served in January 2021. The second compilation only updates the law. Ms Parmar gave me her own compilation. This is slightly revised today. I do not accept her submission that time was very short to consider the second compilation. It is at her request, I stood the matter over from yesterday to today. This was surely enough

time to go through the eight authorities that are not only referenced in the second compilation but of which copies have in fact been made available both to me and to her.

16. To understand the question of law that the 2nd Respondent raises, one must turn back to the Development Agreement. We see from page 46 that the parties to the agreement are the society and the developer. On behalf of the society, the Chairman, the Honorary Secretary and one of the Managing Committee members signed the agreement at page 76. The document is registered. Then at page 78 there is a reproduction of the handwritten register of members showing the flat number, share certificate number and distinctive number of each member. Kondvilkar is featured at serial No. 5 against Flat No. 145 in this list.

17. It is entirely true and correct that the 2nd Respondent has not himself signed this agreement.

18. This is the point of law raised in opposition. The submission is that the development agreement and its arbitration clause cannot possibly bind a non-signatory, namely, Kondvilkar. Reliance is placed on the decision of the Supreme Court in *Indowind Energy Ltd v Wescare (I) Ltd & Anr.*,[1] but this decision lends no support to the argument in question because this was not a case where one of the parties sought to be bound by the agreement was a member or affiliate of a signatory. The petitioner before the Supreme Court sought an order under Section 11 against two parties. One of them

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1 2010 5 SCC 306.

resisted the petition saying that the agreement did not contemplate any contractual relationship between the petitioner and itself and there was no arbitrable dispute. It was in that context that *Wescare* was decided. Then reliance is placed on the decision of the Supreme Court in *Reckitt Benckiser (India) Pvt Ltd v Reynders Label Printing India Pvt Ltd & Anr.*[2] This again is not apposite. This was a question whether the agreement was an international or a domestic arbitration and whether one of the respondents was the parent company or not. Interestingly, *Reckitt Benckiser* made reference to the decision of the Supreme Court in *Chloro Controls (I) P Ltd v Severn Trent Water Purification Inc & Ors*[3] where the Supreme Court itself said, although in a case that that may not be directly appropriate here, that it is not in every situation that a party needs to be a signatory to be bound by an arbitration agreement.

19. Then there is a reference to a decision of the learned Single Judge of this Court in *Housing Development and Infrastructure Limited v Mumbai International Airport Pvt Ltd & Ors*.[4] This is cited for its reliance on *Wescare*, noted above. But these decisions will not carry the 2nd Respondent the necessary distance.

20. As against this, there is a settled body of law that speaks to the contrary.

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2 2019 (4) ALL MR 955 (SC).

3 (2013) 1 SCC 641.

4 Arbitration Petition (L) No. 902 of 2013, decided on 23rd August 2013.

21. On the first proposition that I have noted above, there is the decision of a learned Single Judge of this Court (the Hon'ble Mr Justice KK Tated) in *Aditya Developers v Nirmal Anand Co-op. Hsg Soc Ltd & Ors*.[5] I cite this because this decision was also under the Arbitration and Conciliation Act 1996. It was also a Section 9 Petition. It was also a case where a party obstructed on the ground that he was not a signatory and the agreement was bad. In paragraph 15, Tated J noted the submission that there was no privity of contract and, therefore, the petition was not maintainable. In paragraph 19 Tated J observed:

> "**19**. The objection raised by the respondents are not sustainable at this stage because admittedly, there is an agreement between the petitioner and respondent no.1 Society who is the owner of the suit property for re-development activities. The society by its General Body Meeting decided to carry out re-development of the suit property and for that purpose, they appointed the petitioner by re-development agreement dated 25.9.2013. The said agreement was duly registered with the Sub-Registrar of Assurance, Bombay. It is to be noted that the objection raised by the respondent members about the maintainability of the present petition, their rights and other objections are not maintainable in law. Bare reading of the re-development agreement shows that the Society who is the owner of the Suit Property decided to hand over vacant and peaceful possession to the petitioner for carrying out development. Not only that the petitioner was also ready and willing to comply the terms and conditions of the said agreement i.e. payment of charges/compensation to the respondent/occupants of the suit flats. It is to be noted that Municipal Corporation has also issued IOD in favour of the

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[5] 2016 SCC OnLine Bom 100 : 2016 (3) Mah LJ 761.

petitioner on 24.9.2014. Though the petitioner called upon the respondent nos.3 to 7 they failed and neglected to do so."

Then in paragraphs 21 and 22, the Court said:

"**21.** **It is to be noted that once the person becomes a member of the Co-operative Society he loses his individuality with the Society and has no independent rights except which is given to him by the statute and bye-laws. Hence, objection raised by the respondent nos.3, 4, 6 and 7 that there is no privity of contact between them and petitioner, is not maintainable.**

22. Considering the above mentioned facts and the law declared by our High **court and also out of 18 members, 13 members already handed over vacant and peaceful possession of the flats to the petitioner to carry out re-development, I am of the opinion that the petitioner has made out a case for allowing this Arbitration Petition.** Hence, following order is passed:

(A) Petition is allowed in terms of prayer clause (a) and (b) which reads thus:

"(a) that pending the commencement and culmination of the arbitral proceedings between the Petitioner and Respondent No.1, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay or any other fit and proper person as receiver of the Property described in Exhibit 'A' hereto with all powers under Order XL Rule 1 of the Code of Civil Procedure including power to take physical possession of

the Subject Premises described in the Exhibit 'B' hereto from Respondents No.2 to 7, their family members and / or any person found in possession thereof, with the help of police assistance, if necessary, and to hand over the same to the Petitioner for demolition and re-development of the Property in accordance with the said Agreement being Exhibits 'C' hereto.

(b) that pending the commencement and culmination of the arbitral proceedings between the Petitioner and Respondent No.1, this Hon'ble Court be pleased to grant an order and injunction restraining the Respondents No.2 to 7, their family members, servants, agents and any person claiming by, through and/or under them or any one or more of them from in any manner selling, transferring, alienating, dealing with, disposing off and/or creating third party rights and/or encumbrances in respect of the subject premises described in Exhibit 'B' hereto or any part thereof and/or parting with possession thereof and/or obstructing, interfering with and/or creating hurdles in re-development of the Property described in Exhibit 'A' hereto by the Petitioner under said Agreement (being Exhibit 'C' hereto), in any manner whatsoever."

> (B) Petitioner is directed to deposit cost and/or compensation payable to non-cooperating members/respondents in the office of Court Receiver as per Re-development Agreement dated 25.9.2013 before taking possession.
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> (C) Non-cooperating members/ respondents are entitled to withdraw said amount after possession is taken by Receiver and handed over to the Petitioner.
>
> (D) No order as to costs.
>
> (E) At this stage, the learned counsel for the respondent nos.3, 6 and 7 seek stay of the order.
>
> (F) Considering the facts and circumstances of the case, Court Receiver is directed not to take physical possession of the suit premises for three weeks from today.
>
> (G) Court Receiver to act on copy of this order duly authenticated by the Sheristedar of this court."

(*Emphasis added*)

22. There is no attempt made, and in my view rightly so, to distinguish this decision from the case before me. This is undoubtedly binding on me. I have no reason to depart from the view taken. I am in most respectful agreement with it.

23. But if there was the slightest controversy about this then surely it must be said to have been put to rest in a manner such that the contention raised by Ms Parmar can no longer even said to be *res integra* by the celebrated Division Bench decision of this Court in *Girish Mulchand Mehta & Ors v Mahesh S Mehta & Ors*.[6]

24. This again was a question of a development agreement between a developer and the society and of some members saying that they were not bound by it, not having signed, and opposing the development. The Division Bench considered a large body of law and the argument that the dispute between the developer and the individual descending member was not arbitrable. In paragraph 18, the Division Bench said that it had no hesitation in taking the view that since the dissenting persons were members of the society and held flats in the society they were bound by the decision of the general body of the society as long as the decision is in force. This puts the matter exactly in perspective; and this is why I noted at the forefront the importance or significance of the 2nd Respondent never having even attempted to challenge the general body decision. In *Girish Mulchand Mehta* the dissenting members had not challenged the decisions of the general body and the Division Bench said that the general body 'is supreme' in so far as redevelopment of the property in question or of appointing of the developer is concerned. The overwhelming majority approved the appointment of the developer. These found voice and incorporation in the development agreement, and then the Division Bench said that the decision and acts of the society would bind the dissenting members

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[6] 2019 SCC OnLine Bom 1986.

unless the resolutions were quashed and set aside by a forum of competent jurisdiction. The Division Bench said:

> In other words, in view of the binding effect of the resolutions on the appellants it would not necessarily follow that the appellants were claiming under the society, assuming that the appellants have subsisting proprietary rights in relation to the flats in their possession."

Later in the same judgment the Supreme Court observed on the facts in that case that the developer was under a time-limit to complete construction; and in that case 10 out of 12 members had already vacated. Our position is worse because here 19 out of 20 have vacated, plus the building is in a dilapidated condition.

25. At some point in the hearing, I indicated to Ms Parmar that should he persist, Kondvilkar would be put to terms and asked to deposit costs. She indicated that of course that he could not do so. I understand that. But the reason for putting the question is that even in *Girish Mulchand Mehta* the same question arose. The Division Bench in appeal noted that the learned Single Judge had ascertained that the appellants were in no position to secure the amount invested and incurred including future expenses and costs if the project was to be stalled.

26. Finally, there are the observations in paragraph 20 which deprecates the approach of the dissenting members in stalling the development for years together at the costs of the society.

27. On the general principle invoked by Ms Parmar, the *Girish Mulchand Mehta* Court held that it does not limit the jurisdiction of the Court to pass orders of interim measures against non-signatories. It, too, was confronted with precisely this issue. Indeed, in that case it held that the Court would certainly have jurisdiction by way of interim measures even against the dissenting members:

> 'irrespective of the fact that they are not party to the arbitration agreement or the arbitration proceedings.'

28. This is the clearest possible pronouncement of this branch of law but it is by no means the only one.

29. Now *Wescare* has been cited against this principle and has been distinguished by the learned Single Judge of this Court in *Calvin Properties and Housing v Green Fields CHSL* (RD Dhanuka J).[7] This decision, therefore, distinguished *Wescare*, but, importantly, the matter before Dhanuka J also related to the redevelopment of a property and some dissenting members. *Calvin Properties* also relied on the decision of the Division Bench in *Girish Mulchand Mehta*. That part of the law has, therefore, not been disturbed.

30. It was reaffirmed by the Division Bench of this Court in its 5th December 2012 decision in *Sarthak Developers v Bank of India Amrut-Tara Staff CHSL*.[8] The observations and findings in Sarthak

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7 2013 SCC OnLine Bom 1455 : (2014) 2 Bom CR 398.

8 Appeal (L) No 310 of 2012.

Developers, after reaffirming the Girish Mulchand Mehta ratio, are singularly appropriate to the present case.

> **14. A member of a co-operative society cannot assert a right in respect of a flat occupied by him independent of the rights of the cooperative society. Each of the dissenting members continues to be a member of the Co-operative Society and continues to be bound by the agreement that was entered into by the Society with the developer. Under Section 9 of the Arbitration and Conciliation Act, 1996, a party to an arbitration agreement is entitled to apply to a Court for an interim measure of protection including for appointment of a receiver.** The property in respect of which a Receiver is sought to be appointed may well be in possession of a third party. **The crucial test for the application of Section 9 is whether the party moving the application under Section 9 is a party to the arbitration agreement and whether the appointment of a receiver is sought in respect of property which forms the subject matter of the arbitration agreement.** In the present case, **the dissenting Respondents are subsumed within the identity of a cooperative society of which they are members. Each one of them is bound by the agreement which was entered into by the co-operative society of which they are members, with the Appellant.** The First Respondent Society has supported the redevelopment through the Appellant. In these circumstances, a Petition under Section 9 would be maintainable.
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> **15.** The material which has been placed on record indicates that **out of 160 members of the co-operative society, 149 have in fact consented to the redevelopment by the Appellant.** Respondent Nos. 2 to 19 were initially the eighteen dissenting members. At present, in view of the settlement which has been effected with a further seven of

the dissenting members, only 11 out of 160 members are opposing the process of redevelopment. Neither before the learned Single Judge who has entered a finding of fact nor for that matter before this Court is it in dispute that (i) **the premises of the Co-operative Society are dilapidated and are in dire need of repair;** (ii) the existing buildings do not possess an occupation certificate since their construction in 1985-86; and (iii) regular municipal water supply is unavailable. On these facts, it was, in our view, erroneous for the learned Single Judge to proceed on the basis that the application for appointment of a receiver is liable to be rejected merely on the ground that 142 members of the Society who have supported redevelopment had not vacated their premises on the date of the order. A dissenting member of a Cooperative Society cannot be heard to say that he or she will continue to obstruct redevelopment and would not be liable to vacate his premises until the last of the consenting members vacates. Obviously, as the facts of the present case would indicate, the consenting members were ready and willing to vacate their premises, having entered into agreements with the Society and the developer, but it was as a result of the intransigence of a few dissenting members that the redevelopment was obstructed. **As a matter of fact, as of date, most of the members who have consented to the redevelopment have vacated their premises. 149 out of 160 members have vacated. They have left their homes in the expectation of an early redevelopment. The Appellant has disclosed that it has incurred expenses of Rs.6.36 crores so far.** Conveyance has been obtained of the land in favour of the Co-operative Society on 13 April 2008 and the deed of conveyance has been registered on 7 August 2009. Though the amount of Rs.3 crores was paid to the erstwhile developer between 10 October and 31 December 2006, there is no dispute about the factual position that the society has on 13 April 2008

obtained conveyance which was since registered. The Appellant has paid an amount of Rs.1.14 crores between April and November 2012 towards rentals due and payable to the members who have vacated their flats. **In this state of the matter, it is neither in the interests and welfare of the large majority of members constituting the co-operative society or of the Appellant, who is a party to the Development Agreement to allow a state of impasse to continue.** The submission that the development agreement that was entered into with the Co-operative Society on 25 May 2008 proceeds on the basis of a misrepresentation that the Appellant had paid an amount of Rs.3 crores to the erstwhile developer for obtaining conveyance cannot be, prima facie, accepted. The fact that the Appellant paid an amount of Rs.3 crores to the erstwhile developer has not been disputed during the course of hearing. The only suggestion is that since this payment was made between October and December 2006 prior to the execution of the conveyance on 13 April 2008, this payment could not have been a consideration for the execution of the conveyance, but for the surrender of development rights. The dissenting members of the Society cannot be heard to challenge the title which the Society has obtained by execution of a deed of conveyance which has since been registered. The title enures to the benefit of the Co-operative Society of which the dissenting members are a part.

16. **The material before the Court is sufficient to indicate that the Appellant has a strong prima facie case for the appointment of a receiver,** having invested valuable consideration towards and in execution of the agreement. **But most significantly, the appointment of a Receiver is warranted having due regard to the fact that unless such an order were to be passed, 149 members of the society, who are supporting the redevelopment and**

of whom 143 have vacated their flats, would be left in the lurch at the behest of a miniscule minority.

17. **The appointment of a receiver is undoubtedly a drastic order, but the Court is empowered to do so on well-established principles of it being just and convenient. There are several reasons which must weigh in favour of the appointment of a receiver. Firstly, the condition of the property in question is a matter of importance in the City of Mumbai which is affected by a high degree of saline corrosion. The buildings are admittedly dilapidated and in urgent need of repair or redevelopment. The Society was not in a position to carry out repairs having regard to the fact that in August 2007 the cost of repair was estimated at Rs.1.65 crore by its structural consultant. Hence, the option of redevelopment which has been accepted in the resolution passed by the Society would have to be respected. Secondly, in the present case, an overwhelmingly large proportion of the members of the Society have consented to the scheme of redevelopment and have in fact vacated their premises. The interests of those 149 members who are supporting redevelopment and of whom 143 have vacated are of paramount concern. Thirdly, unless a receiver was to be appointed, it will be open to a dissenting minority of a few members to obstruct and defeat the will of the large majority. Fourthly, each of the dissenting members is also, like all the members of the Society, entitled to permanent alternate accommodation free of cost in the redeveloped building.** An enhancement of the existing areas in occupation is envisaged in the redeveloped building. **In the meantime, each of the members shall be entitled to compensation for transit accommodation as agreed with the Co-operative Society and as paid to all other members. This is not a case where a scheme of**

> **redevelopment is oppressive to the legitimate interests of a minority nor has any such submission been urged.**
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> (*Emphasis added*)

31. *Sarthak Developers*, to my mind, provides a complete answer in this case. All the decisions cited by Mr Singh are binding and are apposite. I find no means to distinguish them from the case at hand. They are not the only ones.

32. There is also a decision of the Hon'ble Mr Justice GS Kulkarni in *Kamla Homes and Lifestyles Pvt Ltd v Pushp Kamal Coop Hsg Soc Ltd & Ors*.[9] There again, some minority members sought to act against stated will of the majority. Kulkarni J also drew upon the Division Bench judgment in *Girish Mulchand Mehta* and said this was impermissible.

33. I have absolutely no cause to depart from this view. Indeed I will go a step further. I am not even permitted by law to depart from these views. If it is suggested that *Girish Mulchand Mehta* was a case of tenants, then that argument fails once we see that it has been used again and again in cases involving members of a cooperative society — including *Sarthak Developers* — just as the 2nd Respondent is today. To accept Ms Parmar's argument would be to act in a manner wholly outside what is permissible in law and wholly contrary to nearly a dozen binding judgments on this law. The invitation by the 2nd Respondent to take this perilous hazardous and adventurous route is one that I must respectfully decline.

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[9] 2019 SCC OnLine Bom 823 : (2019) 5 Bom CR 731.

34. Seen from this perspective, the response by the 2nd Respondent, Kondvilkar offers absolutely no answer or no defence to this Petition. What does he want? He is unable to articulate it beyond saying "the law must be followed". How it has not been followed is not shown. He insists that permission from the Social Welfare Department is needed for re-development of this building. Where he gets this from is not demonstrated. How that department is concerned with, or has any sort of administrative jurisdiction over, a re-development proposal controlled by town planning and municipal law is not shown.

35. If anything, what Kondvilkar does *not* say makes matters worse. I am not even looking to the interest of the developer in this case. Let me put it differently. How long must other members of the society, all of them equally part of the lower income group, suffer? How long must they wait for their redeveloped homes only in order to satisfy perhaps the ego or perhaps the ill-conceived notions in law by which Kondvilkar seems so enchanted? Why should Kondvilkar be invested with the authority to hold his neighbours and fellow members of the society entirely to ransom like this? Under what understanding of law, justice or equity can Kondvilkar state that a building that is demonstrably and in law declared to be hazardous and unfit for human habitation should be left standing, continuing to pose a risk to all concerned? Why should anyone, whether a member of the society, or a Court have to wait indefinitely while Kondvilkar exhausts himself in pursuing this or that legal remedy? What makes Kondvilkar so special that no law applies to him other than the law that he chooses to apply? Kondvilkar has not assailed the society's general body resolution. He has not challenged the development

agreement and it is too late to do that now. What he has done is to arrogate to himself the power to sit alone, god-like, in appeal and supervision of the general body of the society of which he is a member. It must, he insists, conform to *his* notions. It must follow his *diktat* and his fiat. He alone will decide what is to be done, by whom and when. He is not bound by arbitration law. He is not bound by cooperative law. He is not bound by any concept of justice. He is not bound to make restitution. He assumes no liability. He is not bound by anyone or anything, but everyone is bound by his slightest whim and fancy.

36. That is not the law. Kondvilkar will bend the knee to the law and to judgments of this Court. He will subject himself to the discipline of the Cooperative Societies Act and the supremacy of the general body.

37. His defence to this Petition is, therefore, the most complete and the purest moonshine. It is precisely in a situation like this that we are told that mandatory orders must be made.

38. I understand that the nature of the relief is in the form of a mandatory order. The law in this regard is well settled. As the Supreme Court said in *Samir Narain Bhojwani v Aurora Properties And Investments & Anr*,[10] there would have to be an exceptionally strong prima facie case to warrant the grant of a mandatory order. If this is not precisely that exceptionally strong prima facie case then

[10] (2018) 17 SCC 203.

nothing is. There is not a vestige of a defence in law, on facts, in equity or in justice.

39. The Petition must receive the necessary orders.

40. There will be an order in terms of prayer clause (a). The 2nd Respondent will be given time until 30th April 2021 to vacate Flat No. 145 by himself, his spouse and all their belongings. Possession will be delivered to the society, which in turn will deliver possession to the developer. Before taking possession, the Petitioner will deposit with the Court Receiver all amounts of transfer charges, corpus, etc as already paid to other members, excepting transit rent, for which I have made separate provision below. If amounts have not paid to other members, then no deposit is required.

41. The 2nd Respondent will be afforded all the benefits and incidents available to all other members of the society including transit rent from the date of handing over of possession (not from any earlier date), the transit accommodation, shifting and corpus charges.

42. The developer has provided all other members with transit rent. The 2nd Respondent will have the option of taking the transit accommodation or taking the transit rent from the date of possession. The transit rent will be computed on the same basis as applicable to all other members. All other monetary benefits will be afforded to him as well.

43. On reconstruction of the building and after obtaining occupation certificate when all other members are put in possession, the 2nd Respondent will also be given possession of his allotted premises.

44. If the 2nd Respondent has not vacated by 30th April 2021, the Court Receiver, High Court, Bombay will proceed to forcibly take possession from the 2nd Respondent with the assistance of the police authorities from Goregaon Police Station. The Court Receiver is at liberty to break open the locks of the said premises.

45. In this regard, I am mindful of one particular facet of the history of this matter. Any attempt by the 2nd Respondent to obstruct the Court Receiver's department from taking possession, either by filing complaints or otherwise, will be treated as an act of Contempt of Court and will be dealt with as such. Let the 2nd Respondent be under no misapprehension about this. I will not permit him to undermine the authority of this Court or the Rule of Law and he will not subvert orders of this Court by bringing any charges against officers of this Court. The police authorities at the Goregaon Police Station will not take cognizance of any complaint or allegation that the 2nd Respondent makes against any officer of this Court including the Court Receiver or the Court Receiver's duly authorised representative.

46. At this stage, after I have dictated the whole of this judgment in open Court, audibly enough for all to hear, I put the question one last time to the 2nd Respondent as to whether he is willing to

volunteer a date by which he will vacate; in which case I will accept that date and add another two weeks to it; and the previous directions for forcible vacating will then not be required to operate. In open court, he is asked this question by Ms Parmar. Instead of attempting to understand what is being offered, the 2nd Respondent now conducts himself in the most abrasive and confrontational manner. He insists he can now address the Court and argue the matter in any way that he likes. He cannot. He has engaged an advocate, and a very competent one at that, for Ms Parmar has not only held her ground, putting her client's case fairly, precisely and without agitation, but has repeatedly tried to counsel her client. He will not listen. He is adamant. It has to be his way, and no one, not even the High Court dare say otherwise. That is his conduct. And it is in stark contrast to the decency and courtesy of other members of the society who are in the far corner of the court, where they have remained seated in silence, not once interjecting, not once showing agitation of any kind, barely able to conceal their weariness and despair. There can be no doubt on which side justice and equity must fall.

47. Ms Parmar has my sympathies. Her task is unenviable. She has done her very best in an extremely difficult situation. There is nothing more that now needs to be said.

48. The only order that I will decline to make is an order of costs against this Respondent.

49. There will naturally also have to be an injunction in terms of prayer clause (c) of the Petition.

50. The Petition is disposed of in these terms.

51. The request for eight weeks' stay of the order is meaningless as I have given time to vacate till 30th April 2021. This is more than enough time. The application for stay is refused.

52. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)