

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2157 OF 2021
WITH
COURT RECEIVER'S REPORT NO. 261 OF 2023
IN
WRIT PETITION NO. 2157 OF 2021**

Kapilkunj Co-operative Housing Society Ltd ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 3871 OF 2023
IN
WRIT PETITION NO. 2157 OF 2021**

Rajesh Madhukar Chavan ...Applicant
In the matter between
Kapilkunj Co-operative Housing Society Ltd ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 3869 OF 2023
IN
WRIT PETITION NO. 2157 OF 2021**

Sakshi Shankar Shinde & Ors ...Applicants
In the matter between
Kapilkunj Co-operative Housing Society Ltd ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

WITH
INTERIM APPLICATION (L) NO. 21669 OF 2023
IN
WRIT PETITION NO. 2157 OF 2021

Suhana Co-operative Housing Society Ltd ...Applicant
In the matter between
Kapilkunj Co-operative Housing Society Ltd ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

WITH
WRIT PETITION NO. 1977 OF 2021
WITH
INTERIM APPLICATION (L) NO. 28541 OF 2023
WITH
CONTEMPT PETITION NO. 63 OF 2023

Samaj Kalyan Co-operative Housing Society Ltd ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai
& Ors ...Respondents

WITH
WRIT PETITION (L) NO. 17385 OF 2023

Sakshi Shankar Shinde ...Petitioner
Versus
The Slum Rehabilitation Authority ...Respondent

WITH
WRIT PETITION NO. 3573 OF 2023

Vipul Mukundbhai Gandhi ...Petitioner
Versus
The Joint Charity Commissioner ...Respondent

WITH
INTERIM APPLICATION NO. 2846 OF 2023

IN
WRIT PETITION NO. 3573 OF 2023

Umesh Purshottam Parekh ...Applicant
In the matter between
Vipul Mukundbhai Gandhi ...Petitioner
Versus
The Joint Charity Commissioner ...Respondent

WITH
INTERIM APPLICATION (L) NO. 34334 OF 2023

IN
WRIT PETITION NO. 3573 OF 2023

Rohit Dhagai & Ors ...Applicant
In the matter between
Vipul Mukundbhai Gandhi ...Petitioner
Versus
The Joint Charity Commissioner ...Respondent

WITH
WRIT PETITION NO. 2552 OF 2023

Laxmi Manoj Jagirdar ...Petitioner
Versus
State of Maharashtra ...Respondent

WITH
WRIT PETITION (L) NO. 21997 OF 2023

Dilip Shantaram Bendal ...Petitioner
Versus
Shreenath Corporation ...Respondent

WITH
WRIT PETITION (L) NO. 21998 OF 2023

Shreenath Darshan Co-operative Housing Society ...Petitioner
Ltd (Proposed)
Versus
Shreenath Build Grand Pvt Ltd ...Respondent

WITH
WRIT PETITION (L) NO. 22006 OF 2023

Himanshu Rajnikant Mehta ...Petitioner
Versus
Shreenath Odhav Developers ...Respondent

WITH
WRIT PETITION NO. 2543 OF 2023

Rajesh Madhukar Chavan ...Petitioner

Versus
State of Maharashtra & Ors ...Respondents

WITH

WRIT PETITION (L) NO. 7680 OF 2023

Santosh Pandurang Sable ...Petitioner

Versus

The Municipal Corporation of Greater Bombay ...Respondent

WITH

WRIT PETITION (L) NO. 20339 OF 2023

Manishashirish Kale ...Petitioner

Versus

The State of Maharashtra ...Respondent

WITH

WRIT PETITION (L) NO. 21811 OF 2023

Venubai Dagdu Bhor ...Petitioner

Versus

State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 2846 OF 2023

IN

WRIT PETITION NO. 3573 OF 2023

Umesh Purshottam Parekh ...Petitioner

Versus

Vipul Mukundbhai Gandhi & Ors ...Respondents

- Mr Shailesh Shah, Senior Advocate, with Dibyojyoti Banerji & Abbas Zaidy, i/b Zohair & Co, for the Petitioners in WP/3573/2023.**
- Mr JS Kini, i/b Sapna Krishnappa, for the Petitioner in WP/2157/2021.**
- Mr Ranjeev Carvalho, i/b Uttam Rane, for the Petitioner in WP/2552/2023.**
- Ms Divya Parab, for the Petitioner in WPL/17385/2023.**
- Mr RD Soni, with Tushar Momaiyah, for the Petitioner in WPL/21997/2023, WPL/21998/2023 & WPL/22006/2023.**
- Mr Mayur Khandeparkar, with Anand Pai, i/b RD Mishra, for the Petitioner in WP/2543/2022.**
- Ms Manjari Parasnis, for the Petitioner in WPL/20339/2023.**
- Mr Shanay Shah, i/b RD Mishra, for the Petitioner in WPL/21811/2023.**
- Mr Nitin Gaware, i/b Mohan Gawade, for the Petitioner in WPL/7680/2023 & for Respondent Nos 5 to 12 in WP/1977/2021.**
- Mr RP Ojha, i/b Asit Singh & RK Dubey, for the Applicant in IAST/21669/2023.**
- Dr Birendra Saraf, Advocate General, with Jagdish G Aradwad (Reddy) & Vaibhav Charalwar, for Respondent No. 2-SRA in all matters.**
- Mr Bipin Joshi, for Niraj Ved (Developer) in all matters.**
- Mrs Uma Palsuledesai, AGP, for the Respondent-State in WP/2543/2023.**
- Mr Amit Shastri, AGP, for the Respondent-State in WPL/20339/2023 & WPL/17385/2023.**
- Mr Milind More, Addl GP, for the Respondent-State in WPL/21811/2023.**
- Ms Pooja Yadav, for the Respondent-MCGM in all WPS.**
- Mr Sagheer A Khan, with Parth Zaveri i/b Judicare Law Associates, for the Intervenor/Applicant in IAL/34334/2023**
- Mr Chirag Kamdar, with Rajesh Singh, Rahul Singh & Sarita Singh i/b Rajesh Singh & Associates, for Respondent No 1 in WP/22006/2023.**
- Mr VM Thorat, with Kiran Singh, for Respondent Nos. 6 to 9 in WP/2543/2023.**

Mr LT Satelkar, AGP, for the Respondent-State in WPL/2157/2021 & WPL/22006/2023.

Mr SB Gore, AGP, for the Respondent-State in WPL/3573/2023.

Mr Sukanta Karmakar, AGP, for the Respondent-State in WPL/2552/2023 & WPL/21998/2023.

Mr MA Sayed, AGP, for the Respondent-State in WPL/21997/2023.

Mr Suyash Balip, Sub-Engineer, (Bldg & Proposal Dept)- N Ward present.

Mr Nitin Shukla, Sub-Engineer, (B & Proposal Dept)- L Ward present.

Mr SK Dhekale, Court Receiver, present.

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 12th & 13th December 2023

PC:-

PREFATORY

1. We have before us a large group of matters. We have spent a considerable amount of time with the many counsel appearing in this matter led by the learned Advocate General who appears for the Slum Rehabilitation Authority (“SRA”) to find a solution. In some of these matters, we have made orders earlier. On reflection, it now seems to us necessary that from this point on, although the matters may be listed together, each one will have to be taken up separately project-wise and each project will have to be dealt with independently.

2. As we never tire of saying, the common or unifying thread to all these projects is one individual, Niraj Ved, represented by Mr

Joshi, who has our sympathies but which, for a variety of reasons, not the least of which was that Ved was arrested last evening, means that Mr Joshi has strictly limited instructions. But what emerges is the enormous amount of duplicity, damage and destruction Ved has caused and generated in every single one of these projects.

3. Towards the end of this hearing, we found to our alarm that this might only be the tip of the proverbial iceberg. Every day some new misdealing comes to light.

4. Mr Pai has very helpfully put together a tabulated statement. We reproduce this as an annexure to this order for future reference. This categorises the six projects with which we are concerned and provides further details. Some of these details had to be rectified in the course of the hearing. The original with the handwritten noting is retained on file and marked "P1" for identification with today's date.

5. We are concerned with six projects:

- (i) Kapilkunj.
- (ii) Suhana.
- (iii) Samaj Kalyan.
- (iv) Vidya Villa.
- (v) Alka Mansion and Nanji Mason
- (vi) Shreenath Darshan.

6. The break up by petition is thus:
- (a) Kapilkunj is the subject matter of Writ Petition No 2543 of 2022, Writ Petition No 2157 of 2022 and Writ Petition No 17385 of 2023, Writ Petition No 20339 of 2023, Writ Petition No 2552 of 2023 and Writ Petition No 21997 of 2023.
 - (b) Suhana is the subject matter of an Interim Application (L) No 21669 of 2023 in Writ Petition No 2157 of 2022.
 - (c) Samaj Kalyan is the subject matter of Writ Petition No 21811 of 2023 and Interim Application No 28451 of 2023 in Writ Petition No 1977 of 2021.
 - (d) Vidya Villa is the subject matter of Writ Petition No 3573 of 2023.
 - (e) Alka and Nanji Mansion are the subject matter of Writ Petition (L) No 22006 of 2023.
 - (f) Shreenath Darshan is the subject of Writ Petition (L) No 21998 of 2023.

KAPILKUNJ

7. This and Shreenath Darshan are the only two projects in which the SRA is the Planning Authority. Kapilkunj is at Ghatkopar. The facts in this case are complicated. There were originally 12 members who had to be re-accommodated in flats. Then there was a requirement of construction of Permanent Transit Camp (“PTC”) units; 18 of these were to be constructed and handed over to SRA. A

note by Dr Saraf is at pages 35 to 37 with certain details. A part Occupancy Certificate (“OC”) was granted for the flats of the original tenants alone.

8. There are four sale flats on each floor from the first to the seventh floor. There are 12 original tenements numbered 101, 104, 201, 202, 203, 204, 301, 302, 303, 401, 402 and 403. There are supposedly eight sale tenements, 102, 103, 501, 502, 601, 602, 701 and 702. The approved plans showed 18 PTC tenements, but some of these have been merged by Niraj Ved to create eight flats, being Flat Nos 304, 404, 503, 504, 603, 604, 703 and 704. These PTC flats are in the occupation of other purchasers or other persons. We appointed a Court Receiver who has taken symbolic possession. Notably the project was first a Municipal Corporation of Greater Mumbai (“MCGM”) project that was closed and transferred to the SRA under Reg 33(14)(D) of Development Control Regulations (“DCR”) 1991. The building is constructed up to the seventh floor.

9. The total area of the 18 PTC tenements was 446.025 sq mts. This has entirely been sold by Ved and is in the occupation of others.

10. The note given by Dr Saraf on behalf of the SRA is taken on record and marked “S1” for identification with today’s date. We reproduce the relevant portions from pages 36 and 37. They are:

(continued overleaf)

“The names of the Original tenants in the existing building are as below:

1st Floor			
1	101	Jitendra Borade	2BHK original Society Tenant
2	103	Subhash Ashar	3 BHK original Society Tenant
2nd Floor			
3	201	Jayvant Bhabhal	2BHK original Society Tenant
4	202	Pravin Hariya	2BHK original Society Tenant
5	204	Pratibha Druv	1BHK original Society Tenant
6	203	Chaitnya Ghodekar	2BHK original Society Tenant
3rd Floor			
7	301	Shakuntala Naikade	2BHK original Society Tenant
8	302	Prashant Keluskar	2BHK original Society Tenant
9	303	Dinanath Nalawade	2BHK original Society Tenant
4th Floor			
10	401	Madhukar Bamne	2BHK original Society Tenant
11	402	Manisha Bhabhal	2BHK original Society Tenant
12	403	Baban Jadhav	2BHK original Society Tenant

The name of Sale flats purchaser residing in the existing building are as below:

1st Floor			
1	102	Vilas Chavhan	2 BHK Sale Tenant
2	104	Ganpat Khobrekar	1 RK Sale Tenant
5th Floor			
4	501	Mehul Meheta	2BHK Sale Tenant
5	502	Asha Shingare	2BHK Sale Tenant
6th Floor			
6	601	Vijay Mule	2BHK Sale Tenant

7	602	(Locked)	2BHK Sale Tenant
7th Floor			
8	701	Datratray Kanse	2BHK Sale Tenant
9	702	(Locked)	2BHK Sale Tenant

The names of PTC flats purchaser residing in the existing building are as below:

Gr. Floor			
3rd Floor			
1	304	Sakshi Shinde	1 BHK (2 PTC Sold as a Sale)
4th Floor			
2	404	Sitaram Tambe	1 BHK (1 PTC Unit Sold asSale + 1 Sale Unit)
5th Floor			
3	504	Arvind Nanavare	1 BHK (2 PTC Unit Sold as Sale)
4	503	Balkrushna Suranje	2 BHK (3 PTC Unit Sold asSale)
6th Floor			
5	604	Santosh Kothavale	1 BHK (2 PTC Unit Sold as Sale)
6	603	Dattatray Borade	2 BHK (3 PTC Unit Sold asSale)
7th Floor			
7	704	(Locked)	1 BHK (2PTC Unit Sold as Sale)
8	703	(Locked)	2BHK (3 PTC Unit sold as Sale)”

11. As a matter of law, we believe it would be correct to hold that SRA must be put into possession of its PTC area, i.e., the built up area that was assured to SRA for PTC tenements. Going by the number of tenements (8, 18 etc.) is likely to be misleading, especially

in a situation where a developer has illicitly merged two PTC tenements and thus reduced their number. It would be better, therefore, to proceed on the basis of the square foot area that was assured to the SRA as PTC. But this entire area is occupied by third party purchasers.

12. In fact, before us, we have two rival contentions. The contestation is between Mr Khandeparkar's clients on the one hand, who claim to have a decree of a consumer court that is put into execution, and Mr Apte's clients and Mr Gangal's clients, who say that they are in occupation of certain flats. These flats, though constructed as PTCs, were apparently sold to these persons as free-sale flats.

13. As between the rights of a decree holder and the rights of a free-sale flat purchaser under an agreement, whether registered or not, we in the writ court can have nothing at all to say. Even as to a question of priority, this might well be the province of a civil court. But we see no method by which a writ court can completely blind itself to the demand from a public authority that the PTC tenement, meant for a broader public purpose, should be relegated to second place or should be dispensed with entirely in favour of private rights.

14. As Dr Saraf puts it, established principles, including that of *caveat emptor*, must necessarily apply to every flat purchaser, especially in a city like Mumbai. He adds that it has long been settled by this Court, at least on the Original Side, that in the city of Mumbai there is no such creature as an *innocent flat purchaser*. Every

flat purchaser is, or must reasonably be, deemed to be aware of the title that he or she purchases or agrees to take. These arguments have been repelled time and again, including by the writ court.¹ It is, therefore, Dr Saraf's submission that the PTC component of Kapilkunj must be secured to it.

15. This may well involve displacement of those already illicitly put into possession, but if that possession is in itself illicit, and even if it is illicit only or merely because it is possession of a PTC tenement assured to SRA, then the inevitable consequences must follow. These persons will have to be removed. They will be driven to their remedies against Ved. It certainly cannot be that there is trafficking in PTC tenements either by clubbing them or by illicitly selling them to third parties. These third parties cannot get enforceable rights or juridical rights based on demonstrably illicit transfers of areas that were earmarked for public purposes.

16. We believe this is a correct assessment of law. In fact, any other view would create chaos in public administration and would lead to increased corruption and trafficking in premises built for public purposes.

17. As to the question of the right of a decree holder, we understand Mr Pai's agitation. He says that his client has exhausted every available mode of execution. Even if the decree holder has a decree that is in respect of a particular unit, and the level of mischief

¹ *Bombay Environmental Action Group v Bombay Municipal Corporation & Ors*, 1994 SCC OnLine Bom 512 : (1995) 2 Mah LJ 440 : (1995) 2 Bom CR 233, paragraph 10 (of the SCC Report).

here seems to reach new heights, we do not see how a private right can come at the cost of the public element in the PTC tenements. There is no purpose achieved by the decree holder saying that the transfer of the project to the SRA came later or that the PTC tenements were earmarked at a later stage. The decree holder may have other avenues of execution and about which we say nothing at this stage.

18. There are also some serious questions about arrears of unpaid transit rent to members of the Society. We will deal with that at a later stage, if possible.

19. The first requirement in the matter will be, therefore, to join the sale flat purchasers and the so-called “PTC flat purchasers”, as party respondents to Writ Petition No 2157 of 2022, where Mr Kini represents the Petitioners, namely the Society. We also take the liberty now of appointing the Receiver to take symbolic possession of the entirety of Kapilkunj, except for the flats that are in occupation of the original members, i.e., the Society members. We do so because we want to prevent further complications and further difficulties, including the raising of even more claims after this date. Some of the so-called PTC sale flats are already in receivership. Given what is being proposed, i.e., the primacy of SRA PTC area being sequestered to it, even the other flat purchasers will be affected or may be affected, and hence this order for receivership for the remainder of the building.

(continued overleaf)

SUHANA

20. This project at one point overlapped Kapilkunj because Ved had, as part of his constant trafficking, wheeling and dealing, promised to build PTC tenements in Suhana to comply with the PTC requirements of Kapilkunj. Fortunately or unfortunately, Suhana has never been housed with the SRA. It is the MCGM that continues to be the Planning Authority for this structure. The structure is a ground plus four floor structure. There were 16 original members. They had a redevelopment agreement with Ved. We are informed that it has not yet been terminated. We are told that the redevelopment structure has been partly developed. There is balance work yet, including finishing work. The building is not ready for occupation.

21. We had in our previous order directed the Receiver to take possession of only the PTC component or what was said to us then to be the PTC component.

22. There will now be no PTC component in Suhana because there is no possibility of sharing the Kapilkunj PTC quota between Kapilkunj and Suhana. But the rights of the members in Suhana need to be protected and we do not want a contestation with rival third party claims either. Today it is unclear to us how this project will be completed or even by whom. We therefore take the precautionary steps of appointing the Court Receiver to take symbolic possession of the whole of Suhana until further orders of this court.

23. The Society will have to now take an informed decision in regard to its redevelopment agreement and about the completion of the construction at the Society's cost. We understand that there are third party sale agreements that may have been entered into by Ved. These will not be allowed to compromise the rights of the members. In any case, even as against the rights of the Society, the claims of third party purchasers and their rights are issues that have been decided by this Court in *Vaidehi Aakash Housing Pvt Ltd v New DN Nagar Co-op Housing Society Union Ltd & Ors*² and *Goregaon Pearl CHSL v Dr Seema Mahadev Paryekar & Ors.*,³ and both of which our Division Bench in *Deepak Prabhakar Thakoor & Ors v MHADA & Ors*⁴ has reaffirmed. Third party purchasers will have no rights over the assets of the Society. If, therefore, the balance development is done by the Society following a termination of its redevelopment agreement, then any additional Floor Space Index ("FSI") or buildable area benefits will be to the benefit of the Society and may be used to defray costs.

24. If there are any outstanding dues of the MCGM, we direct that until the next date the MCGM will not take coercive action against the Society or against the property.

25. Ms Yadav for the MCGM is requested to let us know by the next date whether any amounts are due, whether as property tax or other charges of the MCGM for Suhana.

2 2014 SCC OnLine Bom 5068 : (2015) 3 AIR Bom R 270.

3 2019 SCC OnLine Bom 3274.

4 2023 SCC OnLine Bom 2234.

SAMAJ KALYAN

26. Here, too, the Planning Authority is the MCGM. The property is at Ghatkopar. The reconstructed structure is presently of ground and five floors. Apparently, there is permission for construction up to the seventh floor, but some construction is completed only up to the sixth floor level. There are said to be 10 residential apartments for Society members and two commercial premises or shops, making 12 in all. There are also said to be proposed 14 free-sale flats. It appears that a total of 15 sale agreements have been executed and there is a sixteenth as well.

27. The construction was being done by Ved, but the redevelopment agreement with Ved has been terminated by the Society. This puts the matter squarely in the frame of a settled law. It means that the Society is entitled now to appoint another developer or to undertake self redevelopment for the remainder of the project. It seems that Society has filed a suit. It is pending in this court. There were consent terms filed in that suit and Ved had agreed to deliver or return possession to the Society by 30th November 2021.

28. Whether or not actual physical possession has been returned is not our concern. An appropriate application may be made in that pending civil litigation to enforce that order. We are today only concerned with ensuring that municipal permissions are not hindered and that the municipal permissions can properly be sought

so that further Society redevelopment is not impeded, further delayed or hindered.

29. The Society has filed Interim Application (L) No 28541 of 2023 in Writ Petition No 1977 of 2021 (where the Society itself is the Petitioner). The Interim Application seeks leave to complete the redevelopment of the Samaj Kalyan building and a direction to the Respondent Corporation to reconsider the application filed by the Society firstly waiving interest and secondly, for an order directing the MCGM to split flat-wise the amount payable to the MCGM.

30. There is no prayer for a Court Receiver. Mr Shah appears for the Writ Petitioner individual in Writ Petition (L) No 21811 of 2023, Venubai Dagdu Bhor. She claims to be a member of the Samaj Kalyan Society. Mr Kini for the Society says that her son was at some point partnered with Ved. We are not concerned in this Writ Petition with those disputes. They will have to be followed in an appropriate civil proceeding.

31. What is of concern to us is that municipal permission, as a matter of public law, should not be held up because of these ongoing disputes. Mr Kini makes an oral request that if the Receiver is appointed to take symbolic or notional possession of the Samaj Kalyan project and directed to execute an agency agreement more or less in the standard terms with the Society through its authorised office bearers and also permitting to complete the redevelopment either itself or through such other contractor, PMC or developer as it sees fit, then the purpose of the Society will be served and the

Municipal Corporation can then be directed to process all further applications.

32. We see no difficulty with accepting this submission. It is manifestly in the interest of the members of the Society (and again, at the cost of repetition, we are not concerned with internal disputes about the membership of the Society and leave those questions open for appropriate proceedings).

33. The Receiver is thus appointed of the Samaj Kalyan project with directions to take symbolic or notional possession. It is important that the Court Receiver's board is, at least for present, put on the premises so that all are made aware. The office bearers of the Society will execute a standard form of agency agreement with the Court Receiver, but a specific term is to be included in that agency agreement to permit the Society to complete the redevelopment either by itself, through his contractors, consulting architects, project management consultants or any other developer of the Society's choice.

34. Any and all disputes between Ved and the Society remain unaffected and will proceed on merits.

35. As regards the demand of the MCGM, we obviously cannot direct the MCGM to waive penalty or interest. There is no doubt that if there is such a demand by the MCGM, it will have to be met. But the Society's remedies in regard to that penalty and interest as against Ved are specifically kept open. It is also open to the Society

to apply to the MCGM, if permissible in law, for the exercise of discretion in waiving or reducing the amount of penalty or interest. Any such application, if made, is to be considered by the Municipal Corporation on merits and in accordance with law as expeditiously as possible.

36. We do, however, require the MCGM to furnish to the Advocates for the Society a breakup of the amount that has been demanded on a per-flat basis. The reason for this is that it is entirely conceivable that the members may have to shoulder the burden for other flats as well at least initially. There may be a question of apportionment between the members inter se. The breakup is a clerical exercise and is required only for this purpose. It has nothing at all to do with the liability to make payment to the MCGM or the merits of an application for waiver of penalty or interest.

37. The MCGM must permit applications for further permissions to be made either in the name of the Society or in the name of such entity as the Society intimates the MCGM. The further entity may be a contractor, a separate consulting architect or another developer. The MCGM is not to insist on a No Objection Certificate (“NOC”) from the previous architect or the previous developer for these purposes and the MCGM will act on production of an authenticated copy of this order.

38. In light of this order, the MCGM will not take any coercive steps presently for recovery of the amount. Mr Kini does not have instructions today to indicate when the amount will be paid. That is

not a matter of immediate concern to us since we are not disposing of any of these Petitions today. It will be open to the MCGM to make a submission at a later date that the amount has not been paid and to request the court to fix a date by which the payment must be received.

39. Mrs Yadav points out that there may be a question of regularisation but under MCGM extant policies, it is not possible to process an application for regularisation until the full amount has been paid. The Society will necessarily take this into account while proceeding further.

40. We make it clear that in any Society redevelopment, it is the members' flats that will receive priority in allotment. Under no circumstances is a member to be denied allotment of a flat on the basis that all flats have been subjected to agreements of sale with third parties.

41. Some of the Respondents to the Petition are third party flat purchasers. Once again, as we have set out above, their rights as against Ved are preserved intact in law by series of judgments including our own reaffirmation as a Division Bench of two decisions of the Single Judge in *Vaidehi Akash* and *Goregaon Pearl*. This necessarily means that after termination of the agreement, third party flat purchasers can have no rights, claims or equities in respect of assets of the Society. This means not only the original structure but the entire redevelopment project including all additional FSI and all free-sale components. It is always open to

those flat purchasers to negotiate with the Society. It is, however, clear that amounts paid to Ved cannot possibly be given credit to by the Society. This Court has already repeatedly held that in such a situation, in law, there is absolutely no privity of contract between third party flat purchasers and the Society or its members. We declined to revisit that aspect of the law or to permit fresh arguments re-agitating the same issue. That law is no longer res integra.

42. It is impossible for any authority or tribunal, such as Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”), to take a different view in law. The law declared by this court will control every single tribunal in the State of Maharashtra including MahaRERA.

VIDYA VILLA

43. Relative to the others, this is a smaller project. MCGM is the Planning Authority. There were seven original tenants. They are represented by Mr Shailesh Shah, learned Senior Counsel. The redevelopment was to be done by Ved. There were individual Permanent Alternative Accommodation Agreement (“**PAAA**”) between Ved and each of these tenants. Ved had acquired ownership of the premises.

44. Necessarily, this puts the Vidya Villa matter in a slightly different frame.

45. In a recent judgment, considering the rights of tenants in regard to reconstruction or redevelopment of a building that is brought down and where the owner proposes no redevelopment,⁵ we held that the tenants are not entirely without remedy. Our judgment took the view, on an analysis of the relevant provisions of the Mumbai Municipal Corporation Act, 1888 (“MCGM Act”), that tenants would have the right to reconstruct but not redevelop. This necessarily means that tenants could not acquire any additional FSI. That additional FSI is available only to the owner on redevelopment. The reason is simple that additional FSI is a benefit that attaches to ownership of the property. A tenant is not the owner of the property and has, therefore, no right to that additional FSI benefit. But the tenant certainly has a right to have the building reconstructed to exactly the same area (although the overall configuration may change) in such a manner that no tenant has reconstructed premises that are even slightly larger than the original tenanted premises. Obviously, the tenants will continue as such, i.e., their holding of these tenements will not be converted to ownership, although that is an optional possibility in a redevelopment by an owner.

46. Accordingly, and to ensure that equities are correctly preserved both between the tenants and Ved, because we cannot contemplate a situation where Ved’s ownership rights are compromised either, we will adopt a similar protocol to the one we followed in Samaj Kalyan. Above all, it is our concern that third

⁵ *Chandralok People Welfare Association v State of Maharashtra & Ors*, 2023 SCC OnLine Bom 2300 : *Neutral Citation*: 2023:BHC-OS:12498.

party rights should not intervene or intercede and compromise the rights of these tenants. We had, therefore, appointed the Court Receiver to take symbolic and notional possession of the Vidya Villa's property. That receivership will continue, but we clarify that this is without prejudice to the rights of the tenants to reconstruct the building in accordance with law and the MMC Act.

47. The rights of the owner Ved, subject to the rights of the tenants, also remain unaffected but nothing that Ved does will be permitted to impede or reduce the rights and entitlements of the tenants. To clarify, this means that it is yet open to Ved to carry out a full-fledged redevelopment by which the tenants can be given redeveloped homes of larger area, possibly on ownership basis, free of cost. That is already the subject matter of a suit. We are only noting this so that it should not happen that this order in any way comes in the way of any reliefs that may be sought in that suit.

48. It is, however, thus necessary to clarify that it is always open to the tenants by virtue of this order to make an application to the MCGM for reconstruction. We say this because although the premises have been demolished, several years have gone by and there has been no progress on redevelopment yet. The MCGM must, if it receives an application for reconstruction from the tenants or an association of tenants, process it in accordance with law without insisting upon a prior NOC from Ved. The MCGM will consider the application on merits on the basis of this order.

49. The Court Receiver reports that, for Vidya Villa, the Court Receiver has taken possession of the site office but not the project. We clarify that the Court Receiver is to take possession of the entire project.

50. There are two further complications in regard to this property. It seems that Ved had entered into an agreement with a public charitable trust. We are told that there is a public charitable trust called the Bhatiawadi Trust. It seems that there is an order of the Charity Commissioner and Ved has apparently indicated that he would buy this property for the development of something called a 'Haveli' for the Trust, subject to the rights of the tenants. The Trust is represented before us, and it clarifies that whatever it wishes to do on the site will not adversely affect or harm the interest of the tenants. We note and accept that statement. We are not concerned with any other allegations regarding the manner in which Ved purchased the property or what the transactions before the Charity Commissioner are at least at this stage. Our concern here is the reconstruction of the tenants' accommodations and tenements. Viewed from any perspective, the tenants' rights to be accommodated are protected even if the Trust succeeds in getting its permissions to construct its Haveli.

51. Consequently, in regard to an application for development or reconstruction by the tenants, the Corporation is not to insist upon an NOC or an order from the Charity Commissioner or an NOC from the Trust. It is open to the Trust to also make an application for development without in any manner affecting the reconstruction

that is proposed or is to be proposed by the tenants. Both can proceed.

52. Mr Pai tells us that the entire property is subject to some attachment proceedings in execution of a decree of the City Civil Court against Ved. The decree was a money decree. We do not see how the execution of the money decree can be done at the cost of the tenants who are on the property. Even if they were not these other complications such a decree could never have been executed to result in an eviction of the tenants from the property anyway. In this, we note that after our order of 8th November 2023 appointing the Receiver, and completely unfazed by anything that is said or done in Court, Ved has actually put in physical possession some other developer.

53. We have appointed a Receiver of that site office. That person or entity has to be removed from the site immediately. That entity may take its own remedies against Ved, civil or criminal. We are not concerned, but we are not permitting this third party to exercise any rights over the Vidya Villa immovable property.

54. At present, there will be only two groups entitled to further apply for permissions for development: firstly the tenants or an association and secondly, the Trust. If Ved seeks redevelopment of any part of the property, he will have to make a proper application to this court in an appropriate Interim Application in one of these Writ Petitions to which the tenants and the Trust must be joined.

Without an order of the court, no public or planning authority will entertain any development application by Ved.

55. Mr Shah is correct in pointing out that going from past form, there is every likelihood that Ved has created even further third party rights over this property. The MCGM will ignore any such claims. Any such claims have to be brought before this court by way of an Interim Application in these proceedings.

ALKA MANSION AND NANJI MANSION

56. These are two buildings at Ghatkopar. Here also the planning authority is MCGM. Mr Soni states that the Alka building has been cleared of all tenancies because Ved has bought out the interest of the tenants.

57. But there is a complication here because there was apparently the involvement of a partnership firm Shreenath Odhav Developers, Respondent No 1 in Writ Petition (L) No 22006 of 2023. That partnership firm has since been reconstituted. Ved has been removed from partnership of the firm.

58. There is an attempt to put some distance between what Ved did while he was a partner and the liabilities of the reconstituted partnership firm. In our writ jurisdiction we cannot possibly entertain those disputes.

59. If the partnership firm is the recorded owner of these properties, then it is the partnership firm that is entitled to redevelop and to submit plans for redevelopment. These will not require the NOC of Ved and the MCGM will not insist upon the NOC of Ved for any redevelopment proposal.

60. In Nanji Mansion, for example, if there are any sitting tenants or occupants, any redevelopment proposal will necessarily have to follow the process of law, that is to provide the tenants or occupants with either redeveloped homes (with possibly a larger area and on ownership basis) or, at a minimum, permit them to reconstruct the building if required. Whether the buildings are in need of structural repairs or are so dilapidated that they need to be pulled down or whether they are the subject of a redevelopment proposal is presently not our concern. We only direct the MCGM to ensure that any redevelopment proposal that comes before it from the 1st Respondent, i.e., Shreenath Odhav Developers is processed in accordance with law and subject to compliance with all applicable regulations but without insisting on any NOC from Niraj Ved.

SHREENATH DARSHAN

61. The last of the projects before us is Shreenath Darshan at Bhandup. This is an SRA project. Now here the entire project site is at present vacant. What was proposed were 26 free-sale flats, 54 PTCs and six shops. Thereafter another 21 PTCs were added, making a total of 75 PTCs in the entire project. Mr Reddy tells us that it is a partially constructed structure. Details are at page 38 of

the report “S1” tendered by Dr Saraf yesterday. Ved is the owner and was the developer. His Letter of Intent (“LoI”) has been terminated. SRA has sealed the building. There is some controversy with the association of flat purchasers about the number of SRA PTC tenements that are constructed or are available. We will not enter into this controversy. As far as we are concerned the public law element requires us to ensure that the full quota or complement of 75 PTCs are made available to SRA. Until and unless, therefore, SRA is satisfied by some proposal that is legitimately brought before it that 75 PTCs or such lesser number as SRA in writing agrees are made available to it, we see no possibility of permitting SRA to unseal the building. Any further development or completion will be subject to this requirement.

62. We clarify that it is open to any project proponent, whether it is the association or otherwise, to make an application to SRA to take up the completion of the project subject to providing properly constructed PTCs up to such extent not exceeding 75 PTCs as the Chief Executive Officer (“CEO”) of SRA may determine on the facts and circumstances of the case.

63. The reason we give the SRA this latitude is that it may well be that as a practical solution, to complete the project and to ensure that at least some PTCs are available to SRA, the CEO of SRA may direct that it would be prudent to reduce the PTC demand from SRA, thus ensuring that the project progresses and is completed.

64. In any event, and without an order of this Court, SRA will not accept any proposal from Ved or from any entity with which Ved is in any way connected. Ved may continue to be an owner of the property. How his ownership rights and remedies are to be addressed against the developer is a matter for a later date.

65. Dr Saraf on instruction states that the SRA has taken possession of an area equivalent to 75 PTCs and handed this over to the competent authority. He clarifies that the area taken over by the SRA may not correspond to the spaces that Ved claimed to have ostensibly constructed as PTC tenements. This is yet another of Ved's typical manipulations in these matters.

GENERALLY REGARDING VED

66. If there is one thing that is apparent to us over the course of a hearing that took not only the whole of yesterday afternoon but several previous days as well and a good part of this morning in passing this order it is that Ved has consistently systematically and for a very long time caused a large number of innocent people extreme prejudice. The victims include Society members, tenants, occupants, free-sale purchasers and even public authorities. He has constantly tried to game the system. He has used benefits available in one project in another trying to set off obligations in one project against entitlements in another. This is not very different from using one credit card to pay off another credit card bill. The consequences are arithmetically inevitable. It is doomed to failure. Ved has constantly oversold. He has put people into possession and then

sold the same apartments to others, so there are at least, by our rough and ready calculation, six cases of such double sales that are before us even now. On a closer reckoning, these might be in double digits or even more. The difficulty is, nobody knows or has any sort of assessment of the lengths to which Ved has gone or what exactly he has managed to perpetrate.

67. We are aware that by various directions in this order, we may well be said to have compromised or in some way restricted Ved's ownership rights in respect of properties of which he is an owner. Indeed, that is precisely our intention. We see no method by which an individual can acquire rights and then start creating harm and prejudice to others but fall back on the argument that since he is the owner his rights cannot be disturbed or limited in any way at all. We are making it abundantly clear that as far as Ved is concerned, this is now a simple matter of making good in money terms everything that he has promised to do but has consistently failed to honour.

68. We are no longer interested in Ved's assurances. This is not a case of one project. There is widespread devastation in as many as six projects in the northern suburbs. For all we know, there may be half a dozen more that have not yet come before this court. We do not see the slightest possibility in law or in equity of permitting Ved to exploit the so called ownership rights if this exploitation is going to come at the cost of innocent third parties, i.e., tenants, occupants, society members and the like.

69. We have made it clear to Mr Joshi in court today that from this point on we will not afford Ved the slightest possibility of making a suggestion, making an application to a public authority for a permission, or even of being heard in this court unless he brings into court sufficient security, i.e., security to the satisfaction of this court in regard to the application that he seeks to make. As a simple example, taking the last of the cases that we have dealt with, namely that of Shreenath Darshan, if Ved has any proposal at all in regard to this property because he is the owner, we will expect him to deposit in court the full market value at current market value rates of all 75 PTC tenements. Unless we have that cash deposit in court we will not entertain a single application by Ved and we will not even hear Mr Joshi on any such application. With necessary variations. we propose to follow this in every single one of the other matters that are before us.

70. No purpose is achieved by disposing of these matters today. We also leave it open to the State Government to initiate such action as maybe necessary against Ved himself. We ourselves are not directing or forcing any criminal or other action against Ved but at the same time it will be no defence to say that these matters are pending before this court.

71. All these cases will require periodic monitoring and supervision following the directions that we have made. We have deliberately not set timelines because every one of the Applicants before us will need to consider their position and make the necessary application.

72. The Court Receiver is entitled to seek assistance and protection from the local police authorities. Everyone of these police authorities will render their assistance and provide a sufficient number of male and female police personnel and will act on production of an authenticated copy of this order.

73. List the matter high on board on 5th February 2024.

(Kamal Khata, J)

(G. S. Patel, J)

ANNEXURE

R. D. Misra
B.A., LL.B.
Advocate High Court

Ms. Anand Bai
11, Neelima Apartments,
S.P.S. Marg, Bhandup(W), *Pet*
Mumbai - 400 078.
Office : 2596 4965, *12/12*
Mob. : 9869109478
E-mail : adv.priyankshukla@gmail.com

REGD. A.D. / U.C.P. / HAND DELIVERY

Ref. No. _____

Date _____

To,
The Prothonotary and Senior Master
High Court (O.S) Bombay
Respected Sir / Madam,
I am concerned for the below mentioned matter,

Date : 08.12.2023

SNo	Particular	A	B	C	D	E	F	Total
1	Project Name	Kapil Kunj	Suhana	Samaj Kalyan	Vidya Vihar	Alka and Nanji Mention	Shreenath Darshan	6
2	Category	SRA	MCGM	MCGM	Not Started	Not Started	SRA	
3	Area	Ghat kopar	Kurla	Ghatkopar	Ghatkopar	Ghatkopar	Bhandup	
3	Original Members Flat	12	16	10	4	32	N.A.	
4	Original Member Shop	0	0	2	0	0	N.A.	
5	Total Original Member Unit	12	16	12	4	32	N.A.	
6	PTC Flats	11	0	N.A.	N.A.	N.A.	N.A.	
7	Free Sale Flat	5	17	14	N.A.	N.A.	N.A.	
8	Free Sale Shop	0	0	0	N.A.	N.A.	N.A.	
9	Total Flat	28	33	24	NA	NA	NA	
10	Total Sale Agreement	38	33	15	N.A.	N.A.	N.A.	
11	Extra Sale Agreement	22	16	1	N.A.	N.A.	N.A.	
12	Disputed Claim	4	N.A.	1	N.A.	N.A.	N.A.	
13	Reserve- Cancele	0	4	1	N.A.	N.A.	N.A.	
14	Claim For PTC	11	NIL	NIL	NIL	NIL	NIL	
15	Available PTC	-	4	-	-	-	-	

Remark -A-Project Name Kapil Kunj CHS-2543/22,2157/22,17385/23

1)The illegal occupiers have used muscle, money & political power and created Gimmick / Fake Possession over the property and delaying eviction process 2018 to till date. The illegal occupants have not come clean hand before this Hon'ble Court and creating mockery of Justice. Hon'ble court give a direction to SRA and Police Authority to provide police protection and complete eviction process and hand over peaceful possession to bonafide purchaser as per court direction.

ANNEXURE


Remark -A-Project Kapil Kunj CHS - 20339/23, 2552/23, 21997/23

1) The, petitioner Manisha Kale (20339/23) bonafide purchaser Flat No.203 got decreed from Hon'ble City Civil Court in her favour. The Builder and society collusion with each other and this flat allotted to Original Member. Mr. Swagat Jagirdar made agreement on behalf of Builder. The Builder and Mr. Swagat Jagirdar both accused in petitioner 's F.I.R. The Builder allotted Flat No. 703 to his associate Swagat Jagirdar Mother Laxmi Jagirdar (2552/23) This is bogus transition. The Builder cancelled this agreement and returned 50 % amount, the remaining amount petitioner Manisha kale deposited in Suit. This hon'ble court to please to direct allotted Flat No. 703 to Petitioner Manisha Kale.

Remark: - C - Project Samaj Kalyan CHS-21811/23, I.A-28451/23 in 1977/21

The petitioner Smt. Venubai D. Bhor, aged 71 yrs old, who is suffering Advance Metastatic Breast Cancer Last Stage, she is original member of said society and her flat No.B-102 builder sold by builder to her son-in-law Shirish Kale without her consent and knowledge. The Shirish Kale got decreed by Hon'ble City Civil Court related to this flat. The builder and society collusion with each other and this serious fact suppressed in this court and filed consent term and allotted dispute flat to her. By this court order in 2019 and consent terms in 2021 reserved Flat No. A-701 against original members for possession and Transit Rent. The Builder paid Transit Rent Rs. 1,25, 24,794/- Crore as per consent terms. But Society has not provided her Transit Rent and pressured signed this consent terms and accept dispute flat B-102. Hon'ble Court please to direct society and builder to provide peaceful possession for any flat if it is not possible then allot reserved flat A-701 and pay transit rent.

Your's Truly


Advocate for Petitioner