

**SUPREME COURT OF INDIA**

Sushila Digambar Naik

Vs.

Maharashtra Housing & Ar.Dev.Authy

C.A.No.565 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

14.01.2011

**ORDER**

1. Leave granted. Heard.

2. The members of the fourth respondent-Society decided to redevelop the property - Building No.34,Ganesh-Kripa Co- operative Housing Society Ltd., Kher Nagar, Bandra (East) Mumbai, by demolishing the existing building through a developer (fifth respondent) in the year 2003. An agreement dated 17.6.2003 was entered between the Society and the developer in that behalf. It is stated that, at that stage, 9 out of the 54 members had opposed the development through the fifth respondent.

3. Under the said agreement, the developer had agreed to provide each member/occupant, a flat with a carpet area of 345 sq. feet and a balcony/dry area of 70 sq.ft. On 9.1.2004, the first respondent (MHADA) issued a NOC for redevelopment to MHADA. However, subsequently, the appellants herein, who are 18 in number (referred to as non- co-operating members of the Society comprising the original nine plus addition nine members), opposed the development through fifth respondent. That led to the developer (fifth respondent) filing a suit against the appellants for a permanent injunction to restrain them from interfering with the development. In the said suit an interim injunction was issued against the appellants.

4. Except the appellants, the other members of the fourth respondent-Society vacated the premises and shifted to transit accommodation provided by the developer (or received an agreed sum as rent in lieu of transit accommodation). The appellants did not vacate the premises. Therefore MHADA passed an order of summary eviction against them under Section 95A of the Maharashtra Housing and Area Development Act, 1976. That order was challenged by the appellants in Writ Petition (Lodging) 10/2010. The writ petition was dismissed by a learned single Judge, by order dated 4.2.2010. The writ appeal filed by the appellants was also dismissed by the impugned order dated 12.3.2010. The said order is challenged by the appellants in this appeal by special leave.

5. The permissible FSI has been increased considerably subsequent to the agreement between the fourth respondent- Society and the fifth respondent- developer. In view of the above and to put an end to the litigation, Mr. Mukul Rohtagi, learned senior counsel for the fifth respondent- developer on instructions from Mr. Yogesh Gupta, the Executive Director of fifth respondent, who is present in Court, offered that instead of 345 sq. feet carpet area and 70 sq. feet dry area originally agreed, the fifth respondent will construct and make available to each of the 54 members of the fourth respondent-Society, including the appellants, a flat measuring 525 sq. feet (carpet area) and 116 sq. feet (dry area) subject to the following conditions:

“(i) All appellants shall vacate and deliver vacant possession of their respective portions to the developer within six weeks from today.

(ii) The Developer will construct and deliver the flats to all the 54 members within thirty months from the expiry of the said six weeks.

(iii) If there is any delay in delivering the flats to the 54 members (that is, within thirty months plus six weeks), the Developer will pay a compensation of Rs.5,000/- (Rupees five thousand) per month to each of the 54 members of the Society [in addition to the transit accommodation/rent-in- lieu thereof (opted by some members) to which the members are entitled].

(iv) The corpus amount agreed will continue to be the same.

6. Mr. Shekhar Naphade, learned senior counsel for the appellants, on instructions, submits that in view of the better terms now offered by the Developer, the appellants are agreeable to join the other members of the Society in regard to the development of the property. The learned counsel for the fourth respondent- Society submitted that the Society was agreeable for the revised benefits. Thus all 54 members of the Society have agreed for the revised benefits offered by the developer. The said settlement between the appellants, fourth respondent and the fifth respondent is recorded.

7. Learned counsel appearing for respondents 1 to 3 submit that as this is a voluntary arrangement between the fourth respondent and its members with the fifth respondent. MHADA has no comments to offer or no role in the settlement.

8. All parties submitted that the appeal may be disposed of accordingly. In view of the above, recording the said settlement, this appeal is disposed of. Each of the appellants, the Society and the developer will be entitled to enforce the above, as a decree, in the event of default/breach by the other parties to the settlement.