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## **ABOUT US**

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# **100% CONSENT OF ALL THE TENANTS NOT REQUIRED FOR REDEVELOPMENT OF OLD AND DILAPIDATED BUILDINGS : BOMBAY HIGH COURT**

AUHTORED BY - MRS. NIRALI YASH DESAI

**KEYWORDS:** Redevelopment, tenants, consent, permanent alternate accommodation

## **INTRODUCTION**

<sup>1</sup>A division bench of Justice G.S. Kulkarni and R.N. Laddha of the Hon'ble Bombay High Court was hearing the petitions under Article 226 of the Constitution of India concerning redevelopment or construction of new buildings, challenging clause 1.15 of the "*Guidelines issued by the MCGM for declaring private and municipal buildings as 'C-1 category' (Dangerous, unsafe)*" (for short, "**The 2018 Guidelines**") which mandates 100 % consent of all the tenants/occupants for redevelopment.

## **ISSUE INVOLVED IN THE CASE**

The main question which arose for the determination in these petitions was whether the Municipal Corporation for Greater Mumbai (for short, **MCGM**) would be justified in imposing a condition that the owner/ landlord who intends to undertake redevelopment of a demolished building, is required to obtain 100% consent of all the erstwhile tenants/occupants, by submitting to the MCGM, 'Permanent Alternate Accommodation Agreements' (for short, **PAAA's**), executed with all the tenants, as a condition for the issuance of a Commencement Certificate (for short, **CC**) stated to be mandated by "**The 2018 Guidelines**" and a similar consequential condition in the Intimation of Disapproval (for short, **IOD**).

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<sup>1</sup> Writ Petition No. 5130 of 2022 - **Raj Ahuja v/s Municipal Corporation of Greater Mumbai** and Writ Petition No. 8486 of 2022 – **M/s. Mangal Buildhome Pvt. Ltd. v/s The State of Maharashtra & Ors.**

## **CONTENTIONS CANVASSED BY THE PETITIONERS**

The petitioners espoused their remedy by approaching the Hon'ble Bombay High Court and challenged the legality of clause 1.15 of the above mentioned guidelines contending the same to be arbitrary, unfair and biased along with being in contravention of Article 14 of the Indian Constitution. The petitioners also further asserted that it may not be always possible that 100% tenants agree for the redevelopment being undertaken by the owners of the land, or it is likely that the tenants/occupants impose a counter condition and/or for some other reasons they are not agreeable to enter into a permanent alternate accommodation agreement. They also further submitted that to have a pre-condition of the owners/developers requiring to enter into PAAA with 100% of the tenants for grant of a commencement certificate, would create serious repercussions of the redevelopment being jeopardized and brought to a halt by a minority/minuscule number of tenants or members of a co-operative society. They also further contended that merely because there is a disagreement on some issues, by some tenants, it cannot result in the project being delayed, causing a serious prejudice to the other occupants of the building, the owners and other stakeholders. It was the petitioners case that that such condition as interpreted by the MCGM in clause 1.15 of the 2018-Guidelines and the impugned conditions as incorporated in the IOD issued to the petitioners, should be held to be arbitrary and illegal.

## **OBSERVATION OF THE HON'BLE BOMBAY HIGH COURT**

The bench noted that *“Once the majority of the occupants/tenants are agreeable to vacate the building and/or to accept the permanent alternate accommodation being offered by the owner, by protecting their occupancy rights as they stood at the time the building was demolished, it cannot be heard from minority of such tenants/occupants, for whatever reasons, that they are not agreeable to a settlement in this regard or resist a permanent alternate accommodation as offered by the owner to the majority of the tenants/occupants, for a reason that a permanent alternate accommodation does not suit their requirements or for some other reasons they are not agreeable to enter into a PAAA, as in the present case. This would amount to a few tenants/occupants bringing the entire redevelopment to a standstill, by not consenting to a permanent alternate accommodation or by raising disputes.”*

The bench by placing reliance upon the judgments pronounced in several matters in the past also observed that *“It is a settled position in law that the interest of the minority occupants/tenants cannot be opposed to the interest of the majority occupants, as also such*

*persons cannot foist on the owners a delay in commencement of the redevelopment work, resulting in the project cost being increased, which would be seriously prejudicial to the owners/developers and above all the majority of the occupants.”*

## **ORDER OF THE HON’BLE BOMBAY HIGH COURT**

The court in a landmark judgment pronounced on 20<sup>th</sup> March, 2023 declared that clause 1.15 of the 2018 Guidelines “*Guidelines issued by the MCGM for declaring private and municipal buildings as ‘C-1 category’ (Dangerous, unsafe)*” do not mandate consent/agreement to be obtained from all (100%) tenants/occupants, as consent of 51% to 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations DCPR-2034, shall amount to sufficient compliance for processing development/redevelopment proposal, for a commencement certificate to be issued, including in respect of buildings covered under Section 354 of the MMC, Act.

The court with respect to the Writ Petition No. 8486 of 2022, directed the MCGM to process the Commencement Certificate in favour of the petitioners without insisting for permanent alternate accommodation agreements in respect of 100% of tenants.

## **ANALYSIS OF THE RULING OF THE HON’BLE BOMBAY HIGH COURT**

The designated office of the MCGM after declaring the building to be in a ruinous condition, issues a notice under Section 354 of the MMC, Act 1888 to immediately pull down the building declaring the same to be under C-1 category, being unfit for habitation. It is necessary that the occupancy of the buildings which are old and dilapidated is prohibited, as they are dangerous to the persons occupying, resorting to and passing by the same.

The developer sometimes even after having obtained the consent of the majority of the tenants/occupants and/or members of the society and concluding the entire line of action for carrying out the redevelopment of the said building, is unable to execute the same when the minority members withhold their consent, thus obstructing the redevelopment of the building. Such instances leave the developer perplexed and redevelopment is unable to see the light of the day. The developer who is willing to proceed with the redevelopment cannot be left in a lurch and

pulled into litigation because of some of the non co-operating members refusing to give their consent for the same. It is pivotal that the tenants/occupants and/or members of the society ensure that the grievances and/or issues raised by them are genuine and supported by concrete reasons and/or adequate legal justification, for if not it will unnecessarily hinder, hamper and delay the proposed redevelopment.

## **IMPLICATIONS OF THE RULING OF THE HON'BLE**

### **BOMBAY HIGH COURT**

The ruling in the above matter expresses a clear and a cogent view of the Hon'ble Bombay High Court that minority of the tenants/ occupants and/or members of the society are not vested with the powers to impede the process of redevelopment. The said ruling has very evidently shut the doors for minority members obstructing the redevelopment process which will assist the developers to commence, carry on and complete the work of redevelopment of demolished buildings on time, thus resulting in a smooth materialization of the proposed redevelopment.

