

S. M. PASHA & ORS.

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v.

STATE OF MAHARASHTRA & ORS.

(SLP(C) No. 4428 of 2016)

FEBRUARY 17, 2023

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**[M. R. SHAH, C.T. RAVIKUMAR AND
SANJAY KAROL, JJ.]**

Constitution of India: Art. 136 – Special Leave Petition by the tenants in occupation of the premises – Respondent no. 5 filed two IAs for perjury and one IA challenging the termination of the development agreement – During the pendency of the proceedings, the development agreement in favour of respondent No. 5 was terminated by Maharashtra Housing and Area Development Authority – New development agreement in favour of another developer has been entered into as the new developer has been appointed – Petitioner's case that in view of the changed circumstances the cause of action did not survive which as such was against respondent No. 5 , and thus, the SLP be permitted to be withdrawn – Held: Copy of the fresh development agreement needs be furnished to the respective tenants by the present management – If any of the tenants is aggrieved by the terms and conditions of the fresh development agreement, it would be open for them to challenge the same before appropriate court/forum – Further, it would also be open for respondent No. 5 to challenge the termination of the development agreement – Taking into consideration the subsequent development and without prejudice to the rights and contentions of the respective parties in the proceedings to be initiated, the petitioners be permitted to withdraw the SLP unconditionally – SLP dismissed as withdrawn.

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CIVIL APPELLATE JURISDICTION : SLP (C) No.4428 of 2016.

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From the Judgment and Order dated 17.10.2015 of the High Court of Judicature at Bombay in WP No.6142 of 2014.

With

SLP (C) No... Cc No..4922 of 2016.

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- A Rana Mukherjee, Dr. Abhishek Manu Singhvi, Sr. Advs., Ms. Dharity Phookan, Ms. Oindrila Sen, Samarth Mohanty, Ms. Lanutula Karanur, Ms. Bindi Girish Dave, Chiranjiv Sharma, Ms. Neetika Sharma, Ashok Anand, Advs. for the Petitioners.
- B Sanjay Jain, ASG, Dhruv Mehta, Neeraj K. Kaul, Gurukrishna Kumar, K.K. Venugopal, Sr. Advs., Rahul Chitnis, Siddharath Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Kirti Dadheech, Nirnimesh Dube, Chirag M. Shroff, Shailendra P. Singh, Sachin Patil, Ms. Garima Bajaj, Nikhil Bamal, Puneet Bindra, Harsh Singhal, Raghav, Abhishek Mishra, Sanchit Garga, Kunal Cheema, Puneet Singh Bindra, Simran Jeet, Rishabh Gupta, Ms. Aditi Deshpande Parkhi, Shivam Dube, Nishant Bishnoi, Ms. Daisy Hannah, Apoorv Shukla, Ms. Ishita Farsaiya, Puneet Chahar, Ms. Prabhleen A. Shukla, Ayush Acharjee, Satya Mitra, Advs. for the Respondents.

The Order of the Court was delivered by

D **M. R. SHAH, J.**

- E 1. Feeling aggrieved and dissatisfied with impugned judgment(s) and order(s) passed by the High Court of Judicature at Bombay in Writ Petition No. 6142/2014 and Writ Petition No. 5490/2014, the present Special Leave Petitions (SLP) have been preferred by some of the tenants in occupation of the premises in question.
- F 2. Dr. A.M. Singhvi, learned Senior Advocate has appeared on behalf of the petitioners in Special Leave Petition (C) No. 4428/2016 except petitioner No. 4. Shri Rana Mukherjee, learned Senior Advocate has appeared on behalf of the petitioners in Special Leave Petition (C) No...CC No. 4922/2016. Shri Dhruv Mehta, learned Senior Advocate has appeared on behalf of the present office bearers. Shri Neeraj Kishan Kaul, learned Senior Advocate has appeared on behalf of respondent No. 5 in SLP (C) No. 4428/2016 – main contesting respondent. Shri Venugopal, learned Senior Advocate has appeared on behalf of respondent No. 17, Shri Gurukrishna Kumar, learned Senior Advocate has appeared on behalf of respondent No. 16 and Shri Sanjay Jain, learned ASG has appeared on behalf of the State of Maharashtra/MHADA.

G 3. Two IAs are filed for perjury on behalf of respondent No. 5. One IA is filed on behalf of respondent No. 5 challenging the termination of the development agreement which was in its favour.

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3.1 Dr. A.M. Singhvi, learned Senior Advocate, appearing on behalf of the petitioners in SLP (C) No. 4428/2016 has prayed to permit the petitioners (except petitioner No. 4) to withdraw the SLP in view of the subsequent development. It is submitted that the subsequent developments are mentioned in IA No. 128881/2019. It is pointed out that during the pendency of the present proceedings, the development agreement in favour of respondent No. 5 has been terminated on 08.10.2018. It is pointed out that the new development agreement in favour of another developer has also been entered into as the new developer has been appointed. It is further pointed out that even subsequently Maharashtra Housing and Area Development Authority (MHADA) has also terminated the development agreement which was in favour of respondent No. 5. It is submitted that in view of the change circumstances, as such, the cause does not survive which as such was against respondent No. 5 and therefore, it is prayed to permit the petitioners to withdraw Special Leave Petition (C) No. 4428/2016.

3.2 Shri Rana Mukherjee, learned Senior Advocate appearing on behalf of the petitioners in SLP (C) No...CC No. 4922/2016 is not disputing the above. However, he has submitted that so far as the tenants and/or the petitioners in this SLP are concerned, they are not aware of the contents and/or terms and conditions of the new development agreement. It is submitted that therefore, the present management may be directed to furnish the copy of the fresh development agreement which has been entered into in favour of new developer so that they can know on what terms and conditions the fresh development agreement has been entered into and whether the tenants are agreeable on the same or not. He has prayed to reserve the liberty in favour of the petitioners to challenge the fresh development agreement before appropriate court/forum, if the petitioners are not agreeable on the terms and conditions on which the fresh development agreement has been entered into.

3.3 Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of respondent No. 5, though has opposed the withdrawal of the present SLPs, but has submitted that even respondent No. 5 has challenged the termination of the development agreement in its favour by way of IA and has also initiated the perjury proceedings. It is prayed that if this Court is not inclined to permit respondent No. 5 to challenge the termination of respondent No. 5 in the present proceedings and is

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- A not entertaining the perjury application(s), the liberty may be reserved in favour of respondent No. 5 to challenge the termination and subsequent development agreement in favour of another developer before appropriate court/forum and the grounds stated in the perjury application(s) may be directed to be considered in accordance with law and on its own merits.
- B 4. Having heard learned senior counsel/counsel appearing on behalf of the respective parties and taking into consideration the subsequent development so stated and pointed out in IA No. 128881/2019, without prejudice to the rights and contentions of the respective parties in the proceedings to be initiated as observed hereinbelow, considering the prayer made by Dr. A.M. Singhvi, learned Senior Advocate, we permit the petitioners in SLP (C) No. 4428/2016 to withdraw the SLP unconditionally. So far as petitioner No. 4 is concerned none has appeared. In view of the subsequent development and even otherwise none has remained present, the present SLP stands dismissed qua petitioner No.
- C D 4 in SLP (C) No. 4428/2016.

SLP (C).....CC No. 4922/2016

Delay condoned. Substitution application(s) are allowed and the name(s) of legal heirs of concerned petitioners are taken on record and the memo of parties be amended accordingly.

- E 5. SLP (C) No.... CC No. 4922/2016 is disposed of as under: -
 - (i) This Court has taken note of the termination of the development agreement which was in favour of respondent No. 5 and executing/entering into the fresh development agreement. The copy of the fresh development agreement needs be furnished to the respective tenants by the present management. If any of the tenants is aggrieved by the terms and conditions of the fresh development agreement, it will be open for them to challenge the same before appropriate court/forum, which may be considered in accordance with law and on its own merits;
 - (ii) It will also be open for respondent No. 5 whose development agreement has been terminated by the present management/MHADA to challenge the termination of the development agreement and executing the fresh
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development agreement before appropriate court/forum and the grounds set out in the perjury application(s) may be considered in accordance with law and on its own merits. A

6. Present Special Leave Petition (C) No. 4428 of 2016 stands dismissed as withdrawn in terms of the above and with the above observations and Special Leave Petition (C) No... CC No. 4922/2016 B also stands disposed of in terms of the above and with the above observations.

7. Pending application(s), if any, shall stand disposed of.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

SLPs disposed of. C

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