

Jagdish Mavji Tank vs Harresh Navnitrai Mehta on 19 April, 2022

Author: L. Nageswara Rao

Bench: B.R. Gavai, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

CONTEMPT PETITION (CIVIL) NO. 442 OF 2021
IN
CIVIL APPEAL NO. 9878 OF 2016

Jagdish Mavji Tank (Dead) Through Lrs. & Ors.
.... Petitioner (s)

Versus

Harresh Navnitrai Mehta & Ors.

....Alleged Contemnor(s)/
Respondent(s)

WITH

Miscellaneous Application No. 2028 of 2021
(in Civil Appeal No. 9878 of 2016)

Miscellaneous Application No. 1838 of 2021
(in Civil Appeal No. 9878 of 2016)

JUDGMENT

L. NAGESWARA RAO, J.

1. The dispute in this Contempt Petition and Miscellaneous Applications relates to the redevelopment of property situated at Plot No.231, T.H. Kataria Marg, Mahim, Mumbai also known as Jariwala Chawls (“subject property”). As we are not concerned with the historical background, the antecedent facts are not dealt with in this judgment. The brief facts that are necessary for the adjudication of the dispute herein are as follows.

2. The tenants/occupants of the Jariwala Chawl filed a Writ Petition (Civil) No.2545 of 2006 in the High Court of Bombay for the following reliefs:

“(a) That this Hon’ble Court be pleased to issue of Writ of Mandamus or any other writ order or direction in the nature of mandamus directing Respondent No.1 to permit redevelopment of the said property known as Jariwala Chawl, situated at Plot No.231, T.H. Kataria Marg, Mahim, Mumbai 400016 in accordance with the decision recorded in the Minutes of the meeting dated 2.8.2004;

(b) That this Hon’ble Court be pleased to issue of Writ of Mandamus or any other writ, order or direction in the nature of mandamus directing Respondent No.1 to forthwith issue the NOC for the purpose of redevelopment of the said property known as Jariwala Chawl, situated at Plot No.231, T.H. Kataria Marg, Mahim, Mumbai 400016 in accordance with the Minutes of the meeting dated 2.8.2004;

(c) That Respondent No.6 be directed to forthwith commence redevelopment of the said property known as Jariwala Chawl, situated at Plot No.231, T.H. Kataria Marg, Mahim, Mumbai 400016 in accordance with the provisions of Development Regulations 33(7) and (9);”

3. On 21.01.2016, the High Court passed an order in the said Writ Petition to the following effect:

“(a) The Chief Officer of the MBRRB in the first instance will file an authenticated copy of the list of occupants in his custody in a sealed cover in this Court on or before 2 nd February 2016;

(b) On or before 15 th February 2016, both developers shall also file in sealed covers in this Court and simultaneously in sealed cover with the Chief Officer, MHADA a list of the occupants from whom each of them they claim to have obtained consents along with the necessary supporting documents;

(c) All the sealed covers shall be retained by the Prothonotary & Senior Master of this Court until further orders;

(d) Thereafter, by 29th February 2016, the Chief Officer will fix a meeting at which all these documents will be opened and scrutinize. That would be done in the presence of the representatives of these developers;

(e) It is clarified that if the Chief Officer finds that the same occupants has given consent to both sides, then the consent so given will not be taken into account in computing the 70% requirement for either side;

(f) The Chief Officer will then assess which of the two Developers has authenticated and bona fide 70% consent.

Further development will be carried out only by the developer having such confirmed consent;

(g) If neither Developer is able to establish such consent, further development will be carried out on a priority basis by MHADA itself through its own resources and for which it may appoint Architects, Surveyors, Engineers and Contractors (but not another developer);

(h) The decision of the Chief Officer will be final and binding on all concerned and will not be called into question;

(i) The entire exercise in terms of our directions will be completed by the end of 15 th April 2016 and conclusions reached by the Chief Officer shall be filed in a sealed cover with this Court.”

4. In compliance of the directions issued by the High Court, an exercise was conducted by the Maharashtra Housing and Area Development Authority (for short “MHADA”) on 05.04.2016 to identify which developer/builder has the requisite 70% consent of the tenants/occupiers to carry out the redevelopment of the subject property. MHADA reported to the High Court that neither M/s. Raj Doshi Exports Pvt. Ltd. nor M/s. Matoshree Infrastructure Private Limited had the requisite 70% consent. The judgment of the High Court dated 21.01.2016 was challenged in this Court initially by M/s Raj Doshi Exports Private Limited, wherein this Court directed the Chief Officer, Mumbai Building Repair & Reconstruction Board (‘MBRRB’) to summon a meeting of the tenants/ occupants for the purpose of ascertaining whether M/s. Raj Doshi Exports Pvt. Ltd. has requisite 70% consent. A Report dated 03.09.2016 was submitted by the Chief Officer, MBRRB in which it was stated that M/s. Raj Doshi Exports Pvt. Ltd has 78.89% consent of the eligible tenants/ occupants, and therefore the said developer should be permitted to redevelop the subject property.

5. While disposing of Civil Appeal No.9878 of 2016 on 29.09.2016, this Court took note of the meeting that was conducted by the Chief Minister of Maharashtra on 02.08.2004 during which, a decision was taken for handing over the entire subject property comprising of four buildings to M/s. Raj Doshi Exports Pvt. Ltd. for carrying out the re- development of the project in a joint venture with MHADA under Regulations 33(7) and 33(9) of the Development Control Regulations, 1991 (“DCR”). By the said order dated 29.09.2016, this Court directed the tenants/ occupants to vacate one building which remained occupied within a period of eight weeks. MHADA and all Government authorities were directed to give necessary NOC/ clearances within eight weeks. The assurance of M/s. Raj Doshi Exports Pvt. Ltd. that development would be completed within a period of 42 months after the expiry of eight weeks was recorded.

6. Pursuant to the said order, a No Objection Certificate was issued by MHADA on 22.11.2016 in favour of the developer/builder levying certain conditions which were not agreeable to the developer/builder. Claiming these conditions to be the hitches in carrying out the re- development process, Interlocutory Application Nos. 4 and 5 of 2017 were filed by Raj Doshi Exports Pvt. Ltd. for clarification of the judgement dated 29.09.2016. During the course of deliberations, the controversy narrowed down to three conditions which, according the MHADA, were to be examined by this Court. The first condition related to the land cost of Rs.29 Crores to be paid back to MHADA and the second related to whether the area which was to be allotted to the tenants should be 300 sq. ft. or

425 sq. ft. The third point raised by MHADA was that the decision of the Chief Minister dated 02.08.2004 cannot be relied upon as it stood superseded by various subsequent events, and therefore it was the NOC given by MHADA which solely governed the re-development work being carried out by the developer/builder.

7. By an order dated 12.04.2017, this Court clarified the aforementioned three issues. It was held that the MHADA was not entitled to the land cost of Rs.29 Crores. This Court clarified that though, the decision of the Chief Minister was to the effect that the construction/redevelopment was to be a joint venture, it was only this portion of the decision which was superseded by the order of this Court dated 29.09.2016 and the remaining portion would still bind the parties. Therefore, the condition for land cost in the NOC could not be insisted upon by MHADA. It was further held that the tenants/occupants would be entitled for 425 sq. ft. as it was only on Court's insistence that the developer/builder agreed to such a condition. Accordingly, MHADA was directed to issue a fresh NOC within four weeks and the undertaking of M/s. Raj Doshi Exports Pvt. Ltd. that the construction would be completed within 42 months was also taken on record. While being conscious of the fact that the project was pending for about three decades, all the authorities were directed to cooperate so that the project could be completed expeditiously.

8. Subsequent to the said order dated 12.04.2017, fresh NOC was issued by MHADA on 09.05.2017 deleting the three conditions as directed by this Court, along with the other conditions such as requirement of demarcation and sub-division of the subject property; issuance of separate property cards and for execution of lease with respect to 2807.15 sq. mtrs. of land in favour of the co-operative housing society in terms of the policy of MHADA among others.

9. After the expiry of the period of 42 months, the tenants/occupants filed the Contempt Petition (Civil) No.442 of 2021 complaining of non-compliance of the judgment of this Court dated 29.09.2016 and the order dated 12.04.2017. It has been alleged by the tenants/occupants that the builder has not even commenced the construction/ redevelopment of the subject property in spite of the undertaking given in this Court that the same would be completed in 42 months from 12.04.2017, which period expired on 12.10.2020.

10. On the other hand, Miscellaneous Application No.2028 of 2021 has been filed on behalf of the MHADA seeking a direction to carry out the redevelopment of the subject property i.e, four buildings in T.H. Kataria Marg, Mahim, Mumbai marked as 102A, 102B, 102C and 102D admeasuring 2975.85 sq. meters. The ground taken in the said Application is that M/s. Raj Doshi Exports Pvt. Ltd. has not commenced the construction even after 54 months and since the builder/developer has miserably failed to carry out re-development, MHADA is ready and willing to carry out the re-development of the four buildings.

11. M/s. Raj Doshi Export Pvt. Ltd. has filed the Miscellaneous Application No. 1838 of 2021 for a clarification that the Applicant should continue to be the owner of the portion comprising of 2807.15 sq. meters of the subject property, as the acquisition process for the said portion by MHADA was not complete. Further, permission was sought from this Court to redevelop all the three plots together and to execute deed of conveyance in favour of the proposed society or condominium in respect of

the entire plot admeasuring 6067.96 sq. mts. which includes the portion of 2807.15 sq. mts. The grievance of the Applicant in this Application is that there was a deliberate delay on the part of MHADA in not granting necessary approvals and by imposing unreasonable conditions in the NOCs. Apart from the other points, M/s. Raj Doshi Exports Pvt. Ltd. alleged in the Application that the layout was conditionally approved by the Municipal Corporation of Greater Mumbai ('MCGM') only on 11.11.2019 with a condition to delineate the subject property into sub plots. This condition was incorporated due to insistence on the part of MHADA to demarcate the subject property and for the issuance of separate property cards indicating that MHADA was the owner of the portion of land admeasuring 2807.15 sq. mtrs. According to the builder/developer, MHADA cannot insist on the condition for issuance of separate property cards and for sub-division of the subject property after the order passed by this Court on 12.04.2017. During the course of the hearing, an affidavit was filed by the Chief Officer, MHADA on 14.03.2022 in which it was stated that the condition of sub-division of the plot shall not be insisted upon in terms of the NOC dated 09.05.2017 and that the builder could approach MCGM for further process.

12. The tenants have been eagerly waiting for the construction of flats since more than 25 years. After hearing the learned counsel for the parties on several occasions, we are convinced that there is gross negligence on the part of the builder in not complying with the directions of this Court dated 29.09.2016 and 12.04.2017. Ordinarily, we would have proceeded to hold the builder guilty of Contempt of Court and to impose suitable punishment. As construction of the buildings promptly would subserve the interest of the tenants/occupiers, we directed the builder/developer to file an undertaking to the effect that the redevelopment project would be completed in a stipulated time frame. This was done after getting a clearance from MHADA and MCGM that the condition for sub division of the plot would not be insisted upon. In compliance of the said direction, an affidavit was filed on 14.03.2022 by M/s. Raj Doshi Exports Pvt. Ltd. to the following effect:

“2. Raj Doshi Exports Pvt. Ltd. will undertake to complete the redevelopment on entire land adm. 6067.96 sq mtrs. being Final Plot No. 231, Cadastral Survey No. 582 at Mahim Division, situated at T.H. Kataria Marg, Mahim, Mumbai-400016, known as “Jariwala Compound” as one single plot and subdivision will not be insisted upon by MHADA/MCGM.

3. The Redevelopment will be done in accordance with regulation 33(7) and/or (9) DCPR-2034.

4. The Deponent will submit the plan for amendment before the MCGM in accordance with DCPR 2034 within 4 weeks from the date of the order in case this Hon'ble Court will please to direct the deponent for that and after that the MCGM will be required to approve the plans within 8 weeks from the date of submission of such plans. In so doing, the MCGM/MHADA will continue all concessions, orders, NOCs and permissions granted from time to time in respect of applicant's application made over the last 6 years from 2016 and will not vary the same and the Deponent will not be required to reapply for the same. The Deponent shall comply only with the terms and conditions as mentioned in the NOC dated 09.05.2017 issued by MHADA

and the conditions of the previous NOC dated 22.11.2016 which stood deleted by this Hon'ble Court's Order dated 12.04.2017, shall not be insisted upon by MCGM/MHADA.

5. That within 30 days of the receipt of approvals, in case this Hon'ble Court will please to direct the tenants/occupants to vacate the premises held by them and on such vacation, the tenants/occupants of building 102-A shall be paid Rs.

25,000/month to each eligible tenant who has vacated their respective premises till such time their new premises are ready and possession is offered in lieu of their existing area as and by way of Permanent Alternate accommodation.

6. That all eligible tenants/occupants will be provided appropriate accommodation admeasuring minimum 508 sq. ft. carpet area (including fungible area) in redeveloped building. The MCGM shall allow incentive FSI on the rehab area which will be provided to the existing tenants i.e. on minimum 508 sq. ft. (inclusive of fungible).

7. That the deponent will execute Permanent Alternate Accommodation Agreement (PAA agreement) in terms of DCPR 33(7) and/or 33(9) read with appendix 3 within 8 weeks from the receipt of all approvals.

8. That the Deponent shall execute conveyance deed of the entire land admeasuring 6067.96 sq. mtrs., as owners thereof, in favour of the one or more Co-operative housing society/ies which shall be formed of existing tenants/occupants and the new flat purchasers as provided under DCPR 2034 r/w Appendix III ignoring the acquisition of portion of land admeasuring 2807.15 sq. mtrs. out of larger land admeasuring 6067.96 sq. mtrs. In pursuance thereof, the plot will not be required to be subdivided and insisted by MHADA/MCGM and MHADA will communicate the aforesaid to MCGM forthwith.

9. That the MCGM will sanction the plans to maintain carpet to built up area ratio as mentioned in decision dated 02/08/2004 of the State Government taken in presence of Hon'ble Chief Minister.

10. That both MHADA and MCGM will implement orders of this Hon'ble Court dated 29.09.2016 & 12.04.2017 and decision taken by Chief Minister on 02/08/2004 and will not raise any objection in development of project.

11. That the deponent builder and its agencies undertakes through Chairman to complete rehabilitation of all tenants within 36 months from the date of vacation of all the eligible tenants/occupants."

13. An objection was taken by MHADA to the aforementioned undertaking filed by the builder regarding execution of conveyance deed by the builder for the entire land admeasuring 6067.96 sq. mtrs. in favour of the proposed Co-operative Housing Society. While objecting to this undertaking, a direction was sought to the builder to facilitate execution of Lease Deed between MHADA and the

proposed Co-operative Housing Society for the portion of land measuring 2807.15 sq. meters on completion of the project. According to MHADA, 2807.15 sq. meters of land out of the 6067.96 sq. meters was acquired by MHADA and the acquisition proceedings had attained finality. It is the case of MHADA that the builder/developer has been given the land acquired by MHADA only for construction and redevelopment, while the ownership of the same still vests with MHADA. Therefore, it is MHADA which has the right to execute the Lease qua 2807.15 sq. meters of land with the proposed Co-operative Housing Society and the builder is free to execute conveyance deeds on freehold basis for the remaining portion of the land. It was contended on behalf of MHADA that neither the decision of the Chief Minister nor the orders of this Court dated 29.09.2016 and 12.04.2017 would help the builder/developer in claiming title over the entire subject property, including the land acquired by MHADA. It was also contended that the builder/developer has not disputed that 2807.15 sq. meters was acquired by MHADA and that the builder cannot now claim any right over the said land.

14. The claim of MHADA for title over 2807.15 sq. meters of land is unsustainable. One of the objections raised by MHADA before this Court which was rejected by the order dated 12.04.2017 was that the builder has to pay back the land cost of Rs. 29 Crores for the land admeasuring 2807.15 sq. mtrs. The second objection was that the project was to be a joint venture as was agreed during the meeting conducted by the Chief Minister. In the order dated 12.04.2017, this Court has categorically held that a portion of the decision of the Chief Minister stood superseded by subsequent events and by the order dated 29.09.2016 in as much as the re-development of the subject property was to be carried out by builder/developer solely. In other words, it was held that the entire property was to be handed over to the builder/developer and that MHADA was not entitled to the land cost of Rs. 29 Crores. As there can be no manner of doubt about the said finding recorded by this Court in the order dated 12.04.2017, it is totally unreasonable on the part of MHADA in insisting that it should be permitted to execute Lease Deed in favour of the proposed Co-operative Housing Society qua 2807.15 sq. mtrs.

15. As mentioned above, the builder is guilty of delaying the construction by not taking suitable steps in complete disobedience of the orders passed by this Court based on its undertaking. Equally, MHADA is also responsible for creating hurdles, initially by imposing unreasonable conditions of sub division of the plots and issuance of property cards in the NOC dated 22.11.2016 and later in insisting that MHADA still has ownership over 2807.15 sq. meters of land. We are of the considered opinion that the builder as well as the concerned authorities of MHADA are guilty of non-compliance of the directions of this Court. They are warned that any further disobedience of the directions given by this Court shall be viewed seriously. The undertaking filed by the builder/developer on 14.03.2022 is taken on record which shall be scrupulously complied with by all concerned.

16. With the aforesaid directions, the Contempt Petition is closed with liberty to the tenants/occupants to approach this Court in case of non-compliance of the directions given above. The other Miscellaneous Applications filed by M/s Raj Doshi Exports Pvt. Ltd. and MHADA are disposed of.

.....J. [L. NAGESWARA RAO]J. [B.R. GAVAI] New Delhi,
April 19, 2022.