

A TENANT CANNOT OBLITERATE THE RIGHT OF AN OWNER OF A PROPERTY TO UNDERTAKE REDEVELOPMENT

INTRODUCTION:

*The Bombay High Court in a recent decision in **Anandrao G. Pawar vs Municipal Corporation of Greater Mumbai and Others**¹, observed that the ownership of a property carries with it several rights including the right to enjoy the fruits of development of that property to the fullest possible extent.*

FACTS:

The Petitioner is an owner and landlord of a building situated at Mumbai ("**said building**"). The contesting Respondents were various tenants of the said building.

Certain tenants of the said building had previously filed a Writ Petition before the Bombay High Court, wherein it was contended that the said building could be repaired. The said tenants also sought to rely on a Structural Assessment Report of the Technical Advisory Committee dated 12th April, 2022, wherein the said building was categorized as C-2A, i.e., the said building required repairs without being evacuated.

The present Petitioner (Respondent No. 7 therein) however contended that the said building was of C-1 category, i.e., dilapidated and required to be vacated immediately. Vide an order dated 27th July, 2023, passed by the Bombay High Court the earlier Writ Petition was disposed of by permitting the said tenants to obtain permission to carry structural repairs to the said building from the Municipal Corporation of Greater Mumbai ("**MCGM**"). It is pertinent to note that at the given time, there was no proposal by the landlord (Petitioner) or

on behalf of the landlord for redevelopment of the said building.

Thereafter vide (i) decision dated 7th December, 2022, the Executive Engineer and Designate Officer (Building and Factory), G/South Ward granted permission in favour of the tenants to repair the said building, (ii) decision dated 9th February, 2023, the Designated Officer, G/South Ward granted its No Objection Certificate to carry out structural repairs under section 499 of Mumbai Municipal Corporation Act, 1888, and (ii) decision dated 24th May, 2023, the Municipal Commissioner, MCGM granted permission/approval for repairs of the said building ("**said decisions**").

Being aggrieved, the present Writ Petition was preferred by the Petitioner inter alia to quash and set aside the decision of the aforesaid authorities.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Bombay High Court was as follows:

Whether a tenant of a building could wholly eclipse the rights of development associated with ownership of a property by an owner?

¹ Writ Petition (L) No. 20227 of 2023

JUDGMENT:

The Bombay High Court observed that ownership of a property carried with it several rights including the right to enjoy the fruits of development of that property to the fullest possible extent. These rights could be curtailed only in accordance with law.

It was observed that in the event the landlord of a tenanted building did absolutely nothing at all and allowed a tenanted building to go to ruin or even to collapse, the tenants were not without a remedy. The Bombay High Court relying on its earlier judgement in **Chandralok People Welfare Association v. State of Maharashtra**² observed that the present matter was exactly the reverse of **Chandralok (supra)**.

The Bombay High Court observed that in the present case the Petitioner had set out the terms on which redevelopment would be done including converting tenancies into ownership. The tenants however contended that the rights of the Petitioner (owner/developer) were subordinate to the repair and reconstruction rights of the tenants, which contention the Bombay High Court rejected. It was observed that to accept such contention of the tenants would be contrary to the Maharashtra Rent

Control Act, 1999, and the Mumbai Municipal Corporation Act, 1888. Further, accepting such contentions would result in elevating the rights of a tenant over those of a property owner who is willing to develop to reaccommodate all tenants.

The Bombay High Court observed that in a situation where a building was in perfectly sound condition and the owner of such building wished to redevelop it, even in such a case a tenant could not preclude an owner from undertaking a full envelope redevelopment of the building or from enjoying the benefits and fruits of ownership of that property only because a few tenants believed that the building could be repaired.

The Bombay High Court held that tenants could not dictate the terms of tenancy beyond anything the law contemplated or impermissibly expand their tenancy rights to the prejudice of the property owner. In the circumstances aforesaid the Bombay High Court allowed the Writ Petition filed by the Petitioner by quashing and setting aside the said decisions.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² 2023 SCC OnLine Bom 2300