

DISSENTING MEMBERS OF A CO-OPERATIVE SOCIETY ARE BOUND BY THE DEVELOPMENT AGREEMENT AS THEIR IDENTITIES ARE SUBSUMED INTO THAT OF THE SOCIETY

*The Bombay High Court in a recent case of **Westin Sankalp Developers v. Ajay Sikand Rana and Ors.**, [2021 SCC OnLine Bom 421] has reiterated its stand that minority or dissenting members of a co-operative housing society have no separate identity from that of the society and that they are bound by the development agreement.*

FACTS

The Kandivali Basant Bahar Cooperative Housing Society Ltd. (“**the Society**”) held a plot of land alongwith structure. In 2009, the Municipal Corporation of Greater Mumbai declared the Society’s structure to be in ruinous condition, unfit and unsafe for human habitation. The Society issued an advertisement in 2018 inviting tenders. Subsequently, the Petitioner-developer submitted to the Society its final offer for redevelopment of the property on 26th April 2018. A special general meeting was held by the Society on 27th May 2018, and on 10th June 2018, the Society informed the Petitioner that its offer had been accepted. On 5th November, 2018 the Petitioner, addressed individual notices to all 14 members of the Society to be present at the office of the Sub-Registrar of Assurances to execute the approved Development Agreement. Separate notices were also sent to the Respondent No. 1 and 2 regarding the same. On 27th December, 2018, 12 out of 14 members signed the Development Agreement. The Respondent No. 1 and 2 members stayed away. The Intimation of Disapproval (IOD) for the proposed building was received in November, 2019 and the Transfer for Development Rights (TDR) was received in December, 2019. All the members of the Society except the Respondent Nos.

1 and 2 had agreed to vacate their respective tenements.

The Development Agreement dated 27th December, 2018 (“**Agreement**”) contained an arbitration clause to govern disputes. Further the Agreement listed all the names of the 14 members of the Society, however, the names of the two Respondents were crossed out. The Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act before the Bombay High Court (“**the Court**”) to pass orders of interim measures against the non-signatories Respondent Nos. 1 and 2 and for appointment of the court receiver.

ISSUE

The issue before the High Court was that whether the Respondent Nos. 1 and 2 being non-signatories to the Agreement were bound by the arbitration clause present therein and whether any reliefs sought under a section 9 petition could be made against them.

SUBMISSIONS

The Petitioners placed reliance on the observations and findings in *Sarthak Developers v Bank of India Amrut-Tara Staff CHSL*¹ and *Girish Mulchand*

¹ Appeal (L) No 310 of 2012

*Mehta & Ors v Mahesh S Mehta & Ors*², both being judgments passed by the division bench of the Bombay High Court. The Petitioners submitted that the two Respondents being members of the society had no separate identity from the Society and did not have the right to oppose the decision taken by it and prejudice the rights of the other members. Further, except for the two Respondents all other members of the Society had entered into the Development Agreement and agreed to vacate their respective tenements.

The Respondents on the other hand submitted that as they had not signed the Agreement and are therefore not bound by the arbitration clause and that no relief in Section 9 can be passed against them. Reliance was placed on the decision of a single Judge of the Bombay High Court in *Acknur Constructions Pvt Ltd v. Sweety Rajendra Agarwal & Ors*³.

JUDGMENT

The High Court observed that all the decisions cited by the Petitioners were binding and apposite and not distinguishable from the case at hand. Placing reliance on the decision of Bombay High Court in *Aditya Developers v. Nirmal Anand Co-op. Hsg Soc Ltd*.⁴ that which involved a section 9 petition where a party obstructed on the ground that he was not a signatory and the agreement was bad, the Court observed that once a person becomes a member of a Co-operative Society he loses his individuality and has no independent rights except what is given to him by the statute and bye-laws. Hence the objection raised by the Respondents therein that there was no privity of contract between them, and the society was not maintainable.

The High Court observed that in light of the several judgments passed by courts relating to the issue at hand the same was no longer *res integra*. The Court

also observed that in *Girish Mulchand's* case the Division Bench of this Court took the view that since the dissenting persons were members of the society and held flats in the society they were bound by the decision of the general body of the society as long as the decision was in force. The Division Bench further observed that the acts of the society would bind the dissenting members unless the resolutions were quashed and set aside by a forum of competent jurisdiction. Further, the general body of the society 'is supreme' in so far as redevelopment of property in question or where the appointment of a developer is concerned. The Court noted that such a decision was reaffirmed in subsequent judgments.

The Court concluded that the arguments advanced on behalf of the Respondents Nos. 1 and 2 were not tenable in view of the judgments laid down by the Division Bench of the Court and reiterated that the dissenting persons are subsumed within the identity of a co-operative society of which they are a member and that each one of them would be bound by the agreement which was entered into by the society of which they are members. It was further noted that Respondent Nos. 1 and 2 had never challenged the decision of the general body nor the development agreement and that they did not have any protective order of any court of competition jurisdiction. The Court also observed that that the *Acknur Constructions* judgment relied upon by Respondents was no longer good law and was impliedly over-ruled by the decision in the *Girish Mulchand* case.

In view of the above, the Court on facts held that the two Respondents were bound by the Agreement and must vacate their respective tenements. Pertinently, the Court further observed that the Agreement was backed by an undisturbed general body resolution of the Society and that there was inherent evidence in

² 2019 SCC OnLine Bom 1986

³ 2009 SCC OnLine Bom 1951

⁴ 2016 SCC OnLine Bom 100

the Agreement that the benefits of it inure to all 14 members of the Society, including Respondents Nos. 1 and 2.

The Court also held that if either of the two Respondents failed to vacate their respective premises within the time stipulated by the Court, the court receiver would be appointed to forcibly evict and eject them from the premises. Lastly, the Court held that the two Respondents would be entitled to all the benefits under the Agreement on parity with the other members and also receive transit rent/compensation as with the other members from delivering vacant possession.

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.