

## **TRANSFER OF TENANCY RIGHT DOES NOT MEAN CREATION OF NEW TENANCY**

### **INTRODUCTION:**

*The Bombay High Court in a recent decision in **Alice Realities Pvt. Ltd. v/s State of Maharashtra and Others**<sup>1</sup> observed that in the event of a mere transfer of a tenancy, no "new" tenancy was created and therefore the prohibition contained in Regulation 33(7) or Appendix III of Development Control Regulations, 1991, ("**DCR**") or the provisions under the Maharashtra Housing and Area Development Act, 1976, would not apply.*

### **FACTS:**

The Petitioner is a private limited company and a tenant in the building known as Saraswati Vinayak Pandurang ("**said Building**"). The said Building was occupied by various tenants/occupants. The said Building, being a cessed structure, was sought to be redeveloped and regulated by Regulation 33(7) of the Development Control Regulations, 1991, ("**DCR**") read with Appendix III to the DCR.

A public charitable trust, known as The Pathare Prabhu Charities Trust, is the owner of the freehold land on which the said Building stood on ("**said Trust**").

The said Trust appointed one Rohan Developers Pvt. Ltd., being the Respondent No. 8 to the Writ Petition, to undertake the redevelopment work of the said Building ("**said Developer**").

Sometime in 2010, one of the original tenants, Ms. Lalita Umakant Dharadhar, assigned her tenancy rights in respect of Room No. 5 in the said Building in favour of the Petitioner.

On 2<sup>nd</sup> November, 2010, the Deputy Engineer of the Repair Board and the Executive Engineer of the Repair Board, after conducting an inspection, prepared an office note stating that

the tenancies in the said Building were considered eligible as the tenancies conformed to the criteria mentioned in the Government Resolution dated 16<sup>th</sup> August, 2010.

On 25<sup>th</sup> November, 2010, the Deputy Chief Engineer, Zone II, of the Repair Board posed a question that whether a tenancy could be transferred from a tenant to a private limited company. The matter was then referred to the Chief Officer of the Mumbai Building Repairs And Reconstruction Board, being the Respondent No. 7 to the Writ Petition.

A list of eligible tenants/occupants was prepared and certified by the Respondent No. 5 to the Writ Petition, reflecting the entities/persons in the said Building that were entitled to permanent alternate accommodation.

However, after the names were certified, the Respondent No. 7 was of the view that the said Developer had purchased 22 tenancies/occupancies from the old tenants of the said Building and thereby inducted 22 new companies as tenants ("**said Tenancies**"). The Respondent No. 7 held that the said Tenancies could not be accepted. The Respondent No. 7 was of the view that Regulation 33(7) of the DCR contemplated the rehabilitation of old

<sup>1</sup> Writ Petition (L) No. 19891 of 2021

tenants/occupants. The Respondent No. 7 opined that the said Tenancies should be treated as a single occupier, be clubbed and be treated as residential and owner occupied. The Respondent No. 7 granted its NOC on 28<sup>th</sup> February, 2011, subject to the above observation in Clause 25 and this was the first NOC that was under challenge.

Being aggrieved by the order dated 28<sup>th</sup> February, 2011, the Petitioner filed an appeal before the Vice President of the Maharashtra Housing and Area Development Authority, the Respondent No. 4.

On 17<sup>th</sup> December, 2013, the Respondent No. 4 dismissed the appeal and confirmed the order of the Respondent No. 7. It was held that the tenancies in the said Building had changed. The 22 new tenancies were in favour of various companies which were interrelated as there were common directors. The said Tenancies did not come within the scope of Regulation 33(7) of the DCR. It was also held that the said Tenancies were one group and that the entire proposal was contrary to Regulation 33(7) of the DCR.

Thereafter, the said Developer received a further revised NOC on 4<sup>th</sup> June, 2015. Clause 28 of the revised NOC reiterated the same conditions/stipulations as were found in Clause 25 of the NOC dated 28<sup>th</sup> February, 2011. This was the second NOC that was under challenge.

#### **ISSUES FOR CONSIDERATION:**

The main issue for consideration before the Hon'ble Court was:

Whether transfer of tenancy would amount to the creation of a new tenancy?

#### **SUBMISSIONS ON BEHALF OF THE PETITIONER:**

The Petitioner submitted that there was no prohibition under Regulation 33(7) of the DCR or Appendix III of the DCR against the transfer or exchange of tenancies. The prohibition, if any, was on the creation of new tenancies.

The Petitioner submitted that there were 22 tenants in the said Building. All the old tenants transferred their tenancies with the consent of the landlord to the 22 new tenants. The number of tenancies did not increase, nor were the original tenancies sub-divided. Accordingly, no "new tenancies" were created.

The Petitioner submitted that "a new tenancy" was not the same as transfer of an old tenancy and therefore the two could not be equated.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

The Respondent submitted that the purpose of Regulation 33(7) of the DCR was to rehabilitate old tenants and therefore the said Tenancies must be treated as new tenancies.

#### **JUDGMENT:**

The Bombay High Court observed that the Housing Board and the MHADA Act were concerned with the condition of the housing structure. Tenancies could not be created, surrendered or transferred under the MHADA Act. Transfer of tenancies were possible only under the Maharashtra Rent Control Act, 1999 ("**Rent Act**").

The Bombay High Court observed that the definition of 'tenant' under the Rent Act, included a person who had derived title under the tenant.

The Bombay High Court observed that in the present case, the concern was not about whether the companies were connected to each other but the concern was whether there was an

attempt to create a 'new tenancy' or whether something impermissible was done which was contrary to the provisions of the Rent Act or the DCR.

The Bombay High Court observed that if there was a mere transfer of a tenancy, that is to say, no new tenancy was created, then the prohibition contained in Regulation 33(7) of the DCR and Appendix III of the DCR would not apply.

The Bombay High Court allowed the Writ Petition and held that Clause 25 of the NOC dated 28<sup>th</sup> February, 2011, and Clause 28 of the revised NOC dated 4<sup>th</sup> June, 2015, could not be sustained. The two clauses were quashed and set aside. It was further held that the condition of clubbing the said Tenancies and treating all of them as a single residential unit and owner occupied consequently could not be sustained.

The Bombay High Court directed the Respondent No. 4, to issue a revised NOC, if required, keeping in mind the directions issued.

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*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.*