



Gauri Gaekwad

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1251 OF 2024**

1. **ASHWIN ASHARA,**
An adult Indian inhabitant, Member of
Respondent No.5 in Respect of Flat
No.B-19, 1st Floor, Bhanujyoti
Co-operative Housing Society Limited,
Kisanlal Nivetia Road, Ranisati Marg,
Malad (East), Mumbai – 400 097.
2. **DAKSHA ASHWIN ASHARA,**
An adult Indian inhabitant, Member of
Respondent No.5 in Respect of Flat
No.B-20, 1st Floor, Bhanujyoti
Co-operative Housing Society Limited,
Kisanlal Nivetia Road, Ranisati Marg,
Malad (East), Mumbai – 400 097.

...PETITIONERS

~ versus ~

1. **THE MUNICIPAL CORPORATION
OF GREATER MUMBAI,**
A Corporation Body having office at
Mahapalika Marg, Mumbai – 400 001.
2. **ASST. MUNICIPAL
COMMISSIONER (WARD OFFICER)
P NORTH WARD,**
Having its office at Liberty Garden
Mamletdarwadi Marg, Malad (West),
Mumbai – 400 064.
3. **ASST. ENGINEER (BUILDING &
PROPOSAL), 'P' WARD**

Having its office at W.S./II, 2nd Floor,
“C” Wing, Municipal Office Bldg.,
90 Road, Nr. Sanskruti Complex,
Thakur Complex, Kandivali (East),
Mumbai – 400 101.

4. **NAMO REALTY VENTURES LLP,**
A Limited Liability Partnership
Company incorporated under the
Provisions of Limited Liability
Partnership Act 2008, having its
Address at 1A & 2, Panchvati, nearby
Anandavan Ashram, S.V. Road,
Kandivali (West), Mumbai – 400 067.
5. **BHANUJYOTI CO-OPERATIVE
HOUSING SOCIETY LIMITED,**
A Society Registered under the
Provision of the Maharashtra
Co-operative Societies Act 1960, Its
having address at Kisanlal Nivetia
Road, Ranisati Marg, Malad (East),
Mumbai – 400 097.
6. **M/S. KABRA & ASSOCIATES,**
Having office at 10th Floor, Kamla
Hub, N.S. Road No.1, J.V.P.D. Scheme,
Vile Parle (West), Mumbai – 400 049.

...RESPONDENTS

APPEARANCE

For the Petitioner	Mr. Rajesh Kachare a/w. Mr. Vincent D'silva and Mr. Sujit Mane.
For Respondent Nos.1 to 3	Mr. Arvind T. Rathod i/b. Ms. Komal Punjabi.
For Respondent No.4	Mr. Amanjhot Anand a/w. Mr. Vasim Shaikh i/b. Pravin Mehta

and Mithi Co.

For Respondent No.5

Ms. Vaishali Sanghvi

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

RESERVED ON : 5TH OCTOBER 2026.

PRONOUNCED ON : 9TH OCTOBER 2026.

JUDGMENT (Per Gautam Ankhad, J):-

1. The Petitioners are husband and wife and were owners of Flat Nos.B-19 and B-20 on the 1st Floor of the erstwhile building of Respondent No.5-Society prior to redevelopment. By the present Petition, the Petitioners seek a Writ of Certiorari, against Respondent No.4-Developer, for an additional area allegedly promised to them in the redeveloped building, together with compensation/damages for the alleged failure to provide such additional area.

2. The facts in a nutshell are that a registered Redevelopment Agreement dated 16th September, 2021 was executed between Respondent No.4-Developer, Respondent No.5-Society and 46 out of 48 of its members for the redevelopment of the dilapidated building. The Petitioners were the only two members who opposed

the redevelopment. Since the Petitioners were not vacating their premises, Respondent No.4 initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996¹, seeking a direction against the Petitioners to vacate and hand over possession of their respective units to facilitate redevelopment. This relief was granted by a learned Single Judge on 21st March, 2022, and the Petitioners were directed to hand over the units for redevelopment. The order also records the conduct of the Petitioners during those proceedings, including their refusal to accept service. The Petitioners thereafter preferred an Appeal² under Section 37 of the Act before the Division Bench, which came to be dismissed as withdrawn on 21st April, 2022. The redevelopment was completed on 28th October, 2024 and an Occupation Certificate has been issued in respect of the new building. All members of Respondent No.5-Society, except the Petitioners, have taken possession of their respective new units.

3. Mr. Kachare, learned counsel for the Petitioners, submits that there has been large-scale fraud and misappropriation of funds in the redevelopment. Respondent Nos.4 and 5 have failed to furnish relevant documents, thereby prejudicing the Petitioners' rights to

1. Arbitration Petition No.30 of 2022

2. Appeal (Stamp) No.12066 of 2022

their property. According to the Petitioners, although the redevelopment is now complete, they have learnt from other members of the Society that the carpet area of the newly constructed flats is less than the area offered by Respondent No.4 under the Redevelopment Agreement. The promised amenities and car parking spaces have not been provided in accordance with the agreed terms. The Petitioners therefore seek additional area and compensation from Respondent No.4. Since their objections/claims have not been considered by any of the Respondents, the Petitioners have filed this Petition. In support of the above submissions, Mr. Kachare relies upon the judgment of the Hon'ble Supreme Court in *Hari Krishna Mandir Trust v/s. State of Maharashtra and Ors.*³ and *Rajani Dattaram Tanawade and Ors. v/s. Municipal Corporation of Greater Mumbai and Ors.*⁴.

4. On the other hand, Mr. Anand, learned counsel for Respondent No.4, submits that the Petition is misconceived and seeks to convert a civil dispute arising out of a Redevelopment Agreement into a proceedings under Article 226 of the Constitution of India. The Petitioners' grievance concerning additional area,

3. (2020) 9 SCC 356

4. 2023 SCC OnLine Bom 2313

amenities, parking, rent and compensation are all matters concerning the redevelopment. The Petitioners have neither challenged the Redevelopment Agreement nor any of the resolutions passed by the General Body of the Society. Thus, the mere presence of a public authority as a party does not, by itself, transform a private dispute into a public law dispute. In any case, there is no allegation of breach of any statutory provision or statutory duty by Respondent Nos.1 to 3 and, consequently, no public law element is involved in this case. The Respondent No.4 has also issued cheques towards transit rent, which the Petitioners have not encashed. It is therefore submitted that the claims for compensation and rent/charges are without merit and cannot be adjudicated by a Writ Court. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Praga Tools Corporation v/s. C.A. Imanuel and Ors.*⁵ for dismissal of the Petition.

5. Mr. Rathod and Ms. Sanghvi, learned counsels for Respondent Nos.1 to 3 and Respondent No.5 respectively, adopt the submissions advanced on behalf of Respondent No.4 and also seek dismissal of the Petition.

5. (1969) 1 SCC 585

6. We have considered the record and heard the learned counsel for the parties. In our view, the present Petition seeking a Writ of Certiorari is not maintainable. Assuming that the Petitioners seek “any other appropriate Writ”, even then this Petition is not maintainable. The substance of the reliefs sought by the Petitioners is additional area and a claim for compensation/damages against Respondent No.4-Developer in the course of a private redevelopment undertaken by Respondent No.5-Society. In these circumstances, a Writ of Mandamus would not lie against a private person, who is not discharging any public duty. The Writ jurisdiction cannot be invoked as a substitute for an ordinary civil remedy for adjudication of private claims relating to additional area, parking, amenities etc. The fact that Respondent Nos.1 to 3 are municipal authorities does not alter this position. Their mere impleadment in this Petition does not create a public law element, more so, since the relief prayed for is exclusively against the Developer-Respondent No.4. In fact it is not even the Petitioners’ case that Respondent Nos.1 to 3 have acted in violation of any statutory provision. On this ground alone, this Petition cannot be entertained.

7. Mr. Anand's reliance on the judgment of the Hon'ble Supreme Court in *Praga Tools Corporation* (supra) is well placed, wherein the Hon'ble Court has held that where the dispute is rooted in a private contract and no element of public law is involved, the party must pursue its ordinary civil remedies and cannot be permitted to invoke the Writ jurisdiction as a substitute for a civil claim.

8. The judgments relied upon by the learned counsel for the Petitioners do not apply in the present case as there is neither failure to perform statutory duty by State authorities nor is there any public law element involved. As regards the judgment of the Hon'ble Supreme Court in *Hari Krishna Mandir Trust* (supra), the decision reiterates that the jurisdiction under Article 226 is wide and that disputed questions of fact do not, by themselves, constitute an absolute bar to the exercise of Writ jurisdiction. However, the existence of jurisdiction does not mean that it must be exercised in every case. The Writ Court is required to consider the nature of the right asserted, the duty sought to be enforced, the character of the dispute and the availability of an efficacious remedy.

In the present case, the Petitioners effectively seek damages/compensation from a private Developer. Hence the said judgment has no application in the facts of the present case.

9. The reliance placed by Mr. Kachare on *Rajani Dattaram Tanawade* (supra), in support of the submission regarding 35% fungible FSI, also does not advance the Petitioners' case. The facts therein are distinguishable as the Developer therein had sought to appropriate the fungible FSI towards common areas. In this case, the Petitioners have not challenged either the Redevelopment Agreement or the resolutions of the General Body pursuant to which the redevelopment was undertaken. The Agreement has been acted upon, the construction has been completed, the Occupation Certificate has been issued and the other members have taken possession.

10. We also note that the Petitioners have admitted in paragraph 24 and at ground (e) of the Petition, that they had suggested some other builders for the purpose of redevelopment, but Respondent No.5 failed to consider the same. No explanation is forthcoming as to why the Petitioners did not pursue civil remedies to agitate their rights.

11. From the pleadings in the Petition and the arguments advanced before us, we find that the dispute is of private nature and cannot be agitated in a Writ Petition. Hence, we find no merit and **Writ Petition is dismissed.**

12. **Rule is discharged.**

13. There shall be no order as to costs.

(GAUTAM A. ANKHAD, J.)

(SUMAN SHYAM, J.)