

Gujarat High Court

Rashmikaben Vikramkumar Patel vs Gujarat Housing Board on 16 January, 2019

Bench: Vipul M. Pancholi

C/SCA/17931/2018

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17931 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

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1 Whether Reporters of Local Papers may be allowed to Yes see the judgment ?

2 To be referred to the Reporter or not ? Yes 3 Whether their Lordships wish to see the fair copy of the No judgment ?

4 Whether this case involves a substantial question of law No as to the interpretation of the Constitution of India or any order made thereunder ?

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RASHMIKABEN VIKRAMKUMAR PATEL Versus GUJARAT HOUSING BOARD

===== Appearance:

MR MEHUL S SHAH, SENIOR ADVOCATE WITH MR TATTVAM K PATEL(5455) for the PETITIONER(s) No. 1,2,3 MR NIRZAR S DESAI(2117) for the RESPONDENT(s) No. 1 MR ANSHIN H DESAI, SENIOR ADVOCATE WITH MR PADMRAJ K MR YN OZA, SENIOR ADVOCATE WITH M R H J D H O L A K I A (5 8 6 2) f o r t h e

===== CORAM:

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI Date :16/01/2019 CAV JUDGMENT

1. This petition is filed under Article 226 of the Constitution of India, in which, the petitioners have prayed for the following reliefs:

"(a) admit and allow present petition,

(b) issue a writ of mandamus or any other writ, order or direction restraining respondents from demolition/redevelopment of Block No.H/28 of Ekta Apartment situated on final plot No.297 of Town Planning Scheme No.29 of village Vadaj.

(c) issue a writ of mandamus or any other writ, order or direction directing respondents to repair damages caused to Block No.H/28 and and 217) owned by present petitioners in Ekta Apartment situated at final plot No.297 of Town Planning Scheme No.29 of village Vadaj.

(d) Declare that, Redevelopment of Public Housing Guideline, 2016 issued by the Urban Housing Development Department, State of Gujarat, do not apply in facts of the present case, ALTERNATIVELY,

(d) Issue a writ of certiorari or any other writ order or direction, quashing and setting aside Redevelopment of Public Housing Guideline, 2016 issued by Urban Housing Development Department, State of Gujarat and further declare it to be illegal and unconstitutional and not having any legal force.

(e) Restrain respondents from demolishing or damaging or redeveloping Block No.H/28 of Ekta Apartment situated at final plot No.297 of Town Planning Scheme No.29 of village Vadaj pending admission, hearing and final disposal of above captioned Special Civil Application.

(f) pass any other and further orders as deem fit in the interest of justice."

2. Heard learned Senior Advocate Mr.Mehul S. Shah assisted by learned advocate Mr.Tattvam K. Patel, learned advocate Mr.Nirzar S. Desai for respondent No.1, learned Senior Advocate Mr. Anshin H. Desai assisted by learned advocate Mr.Padmaraj K. Jadeja for respondent No.2, learned Senior Advocate Mr.Y.N. Oza assisted by learned advocate Mr.H.J. Dholakia for respondent No.3. Looking to the issue involved in the petition and with the consent of the learned advocates for the parties, the petition is being heard and decided finally.

3. Learned Senior Advocate Mr.Mehul S. Shah appearing for the petitioners submitted that the land situated at Village Vadaj, Town Planning Scheme No.29, Final Plot No.297, admeasuring 14176 sq. meters was originally belonged to Gujarat Housing Board. On the said land, Ekta Apartment is constructed, which is having approximately 60 flats and 36 shops. The petitioners are owning and occupying Shop Nos.215, 216 and 217 situated at ground floor in Block No.H/28 (hereinafter referred to as "the properties in question"). It is submitted that the properties in question were given to one Piyushkumar Amrutlal Jani by the respondent Board in the year 1995 by registered Conveyance Deed. The petitioners purchased properties in question by registered Sale Deed dated 30.10.2007. It is submitted that the petitioners are running business of lathe work in the name of "Surat Engineering Works" in the properties in question since 2007. 3.1 Learned Senior Advocate, thereafter, submits that before filing of the petition, respondent No.2 suddenly started demolition work in the different units/building of Ekta Apartment. The petitioners, therefore, inquired and during the inquiry, it was revealed that respondent No.2, which is a developer, has entered into tripartite Agreement with respondent No.1 Board and with different members of Ekta Apartment. It was further revealed that some of the individual owners of the different properties of Ekta Apartment gave their consent for the purpose of redevelopment and, therefore, the respondent Board had floated tender for redevelopment, in which, the tender of respondent No.2 was accepted and the work order is given to respondent No.2. It is submitted that the petitioners have never

submitted consent forms to the respondents. The petitioners, therefore, asked for the information under the Right to Information Act, 2005 and the reply was submitted by respondent No.1 wherein it is stated that the redevelopment work is assigned to respondent No.2. The petitioners, thereafter, obtained a copy of the Guidelines issued by the Urban Housing and Urban Development Department, State of Gujarat, for Redevelopment of Public Housing Scheme. Learned advocate referred the said Guidelines, which is produced on record.

3.2 It is contended that reliance placed by respondent No.1 Board on the Guidelines of 2016 while entrusting the redevelopment work to respondent No.2 is illegal and the said Guidelines cannot be said to be binding policy. Such Guidelines are not applicable to the present case. It is submitted that when the petitioners have not given their consent for redevelopment, they were under the impression that so far as the properties owned by the petitioners is concerned, no demolition work or redevelopment work could be undertaken by the respondents. 3.3 At this stage, it is required to be noted that during the pendency of the present petition, Civil Application was filed by the Ekta Apartment Association, through its Secretary, for joining as party respondent in the present petition. This Court allowed the said application by order dated 27.12.2018 and thereby the Ekta Apartment Association is joined as respondent No.3.

3.4 Learned Senior Advocate Mr.Mehul S. Shah appearing for the petitioners has contended that Ekta Apartment Association is not registered and, therefore, the said Association cannot enter into tripartite agreement with respondent Nos.1 and 2 on behalf of the residents of the Ekta Apartment. Learned advocate has referred the reply submitted by respondent No.3 and submitted that in the said reply, respondent No.3 has admitted that the said Association is not registered. Thus, such unregistered Association cannot execute the contract. Learned advocate has referred the provisions contained in Section 11 of the Indian Contract Act, 1872 and submitted that unregistered Association is not having any capacity to enter into contract. Hence, tripartite agreement dated 19.09.2018 is not valid in the eye of law. In support of the said contention, learned Senior Advocate has placed reliance upon the decision rendered by the Bombay High Court in the case of Tejoomal Lakhmich Vs. M.J. Talegaonkar and others reported in AIR 1980 Bom. 369. 3.5 Learned Senior Advocate, thereafter, referred the document produced at Page□11 of the compilation i.e. Letter of Acceptance dated 17.05.2018 issued by respondent No.1 in favour of respondent No.2. Learned advocate has referred Clause□2 of the said document and submitted that 100% consent of the beneficiaries is required to be obtained by respondent No.2 before issuing work order and the same was required to be submitted to respondent No.1. Learned advocate, thereafter, referred the format of the consent letter, copy of which is produced at Page□34 of the compilation and typed copy of the same is produced at Page□41□A of the compilation. It is submitted that the petitioners have not given consent in the said Consent Form. In spite of that, respondent No.2 has started the demolition work and, therefore, the respondents be restrained from carrying out the redevelopment work.

3.6 Learned Senior Advocate Mr.Shah would further submit that the respondents have produced a copy of the communication dated 19.9.2017 addressed by respondent No.3 to respondent No.1 It is submitted that along with the said communication, the respondents have produced a copy of the table showing block numbers, names and signatures of the concerned owners. Learned advocate has referred Pages□106 to 109 of the compilation and submitted that after Page□106 at Page□107, the

document suggests internal Page No.3. However, the respondent has not produced internal Page No.2. It is submitted that when respondent No.1 has filed affidavit in reply, same document is produced at Pages 91 to 195 of the compilation and in the said documents, Page No.192 is blank. Thus, the respondents have tried to misguide this Court by submitting that internal Page No.2 is blank. At this stage, learned Senior Advocate Mr. Shah has submitted that the signatures shown at Page 109 at Serial Nos.19 to 21 are not the signatures of the concerned petitioners. Thus, the petitioners are disputing the signatures on the document produced at Page 109.

3.7 Learned Senior Advocate Mr. Shah, thereafter, would submit that the Ahmedabad Municipal Corporation ('AMC' for short) has issued notice dated 22.09.2017 to the petitioners and concerned occupiers of the Ekta Apartment. In the said notice, it is stated that the owners of the said apartment have to repair the damage part of the building after taking guidance from Structural Engineer. However, there is no direction to the occupiers for demolition of the building and for redevelopment of the same. Therefore, the petitioners cannot be compelled to vacate their premises in question without any authority of law. At this stage, learned advocate has referred the opinion given by the Structural Engineer Mr.Chintan Himanshubhai Mehta wherein the said Structural Engineer has opined that the columns of the building require retrofitting and there is no requirement of complete demolition of the structure. It is also stated that it can be refurbished by retrofitting and renovation and the building requires replastering and renovation. Thus, on the basis of the said Certificate issued by the Structural Engineer, it is contended that there was no need for the respondents to go for the redevelopment of the building after demolishing the same. 3.8 Learned Senior Advocate Mr.Shah would further contend that as per the communication dated 31.08.2017 addressed by the President and Secretary of the Ekta Apartment to respondent No.1, the flats and shops are to be given to the concerned members/beneficiaries at the same place where they are having their flats and shops. However, as per the tripartite agreement entered into between the respondents, shops are to be allotted to the concerned shop owners not on the ground floor but on the first floor with 25% more carpet area. Thus, though the petitioners are having shops at the ground floor, they will be allotted the shops on the first floor. It is submitted that the petitioners, who are owners of the properties in question, cannot be forced to accept such redevelopment and right to property is considered to be a human right as held by the Honourable Supreme Court in various decisions rendered by it. In support of the said contention, learned Senior Advocate Mr. Shah has placed reliance upon the following decisions rendered by the Honourable Supreme Court:

(1) Chairman, Indore Vikas Pradhikaran Versus Pure Industrial Cock and Chem. Limited reported in (2007) 8 SCC 705, (2) Vimalben Ajitbhai Patel vs. Vatsalabeen Ashokbhai Patel reported in (2008) 4 SCC 649 and (3) Lalaram and others vs. Jaipur Development Authority and another reported in (2016) 11 SCC 3.9 Learned Senior Advocate Mr. Shah, therefore, urged that this petition be allowed and the reliefs prayed for in the petition be granted in favour of the petitioners.

4. On the other hand, learned advocate Mr. Nirzar S. Desai appearing for respondent No.1 has opposed this petition and raised a preliminary objection that at the time of filing the petition, the petitioners have not joined Ekta Apartment Association as party respondent though certain allegations are leveled against the office bearers of the Association. It is submitted that the State

Government is also not joined as party respondent though the petitioners have challenged the Redevelopment of Public Housing Guidelines of 2016 issued by the Urban Housing and Urban Development Department, State of Gujarat. Learned advocate Mr.Desai has produced on record a copy of the Government Resolution dated 11.02.2016, by which, Public Housing Guideline, 2016 is framed by the State Government. It is further submitted that the AMC had issued notice to the petitioners. In spite of that, AMC is not joined as party respondent in the present proceedings and, therefore, this Court may not entertain this petition on the ground of non-joinder of the necessary and proper party. 4.1 Learned advocate Mr.Desai would further submit that the petitioners have suppressed material facts in the petition and they have not produced a copy of the communication dated 19.09.2017 addressed by the Ekta Apartment Association to respondent No.1 along with the signatures of the members. It is submitted that one of the petitioners had given a consent for redevelopment on behalf of all the three petitioners. The said facts are suppressed. Learned advocate Mr.Desai further submitted that respondent No.1 has produced on record a copy of the communication dated 19.09.2017 addressed by the Ekta Apartment Association to respondent No.1. Original copy is shown to this Court. It is submitted that as per the said communication, two documents were attached i.e. Redevelopment Committee and consent of the members. It is submitted that internal Page No.1 and internal Page No.2 are the points of redevelopment and Redevelopment Committee and from internal Page Nos.3 to 6 table showing block numbers, names and signatures of the members. Thus, it is submitted that a doubt created by the petitioners that internal Page Nos.1 and 2 are not produced by the concerned respondents along with their reply, is not correct and the allegation made by the petitioners that the respondents have tried to misguide this Court, is also not correct.

4.2 It is further submitted that the petitioners have not challenged tripartite agreement entered into between the present respondents and, therefore, it is not proper on the part of the petitioners to contend that respondent No.3 Association is not having capacity to sign the said agreement.

4.3 Learned advocate Mr.Nirzar S. Desai thereafter submitted that the petitioners have filed this petition at belated stage by suppressing material facts when the demolition work is almost over. It is submitted that the petitioners were carrying on business in the premises in question and the petitioners were also aware about the redevelopment work given to respondent No.2. In spite of that, the petitioners have waited till demolition work is over. Therefore, this Court may not entertain this petition.

4.4 Learned advocate Mr.Nirzar S. Desai submits that unfortunate incident occurred on 23.08.2017 in Ekta Apartment. In the said incident, overhead water tank of Block No.30 fell down and because of that, part of Block No.30 collapsed which resulted into death of two persons and several other residents were injured. Because of the said incident, Officers of respondent No.1 rushed to the site. Officers of the AMC and the Torrent Power also immediately reached to the place of incident. The AMC asked the residents to vacate the premises and sealed the shops and flats of Block No.30. The Torrent Power also disconnected the electricity connection of flats and shop of Block No.30 of the Ekta Apartment. Immediately thereafter, the AMC issued notice dated 24.08.2017 to the occupiers of the flats blockwise including the occupiers of Block No.28 wherein it was stated that the blocks are in the worst condition and, therefore, they should get it repaired after taking guidance from the

Structural Engineer. It is submitted that though the said notice is served to the petitioners, they have not produced a copy of the same along with the petition. At this stage, it is submitted on the very same day, the flat owners convened an extraordinary general meeting and unanimously passed a Resolution for redevelopment. In the said meeting, members of Block No.28 have also participated and voted in favour of redevelopment. Thereafter, the general meeting was also convened to decide the further course of action. It is submitted that the Ekta Apartment Association appointed Mr. Shailesh Khandwala, who is a Consulting Engineer and Government Registered Valuer, and asked him to issue a stability certificate. The said expert, after examining each of the blocks, submitted his report. Learned advocate Mr. Desai has referred the said report, copy of which is produced at Page 81 of the compilation. It is stated in the report that "these building blocks even after extensive repair works cannot become safe and sound for human habitation. If he has to make a decision, he would prefer to reconstruct them to make them habitable again." 4.5 Learned advocate for respondent No.1 further submits that on the basis of the said opinion, the general meeting was convened by respondent No.3 and it was resolved to go for redevelopment as per the redevelopment policy of the State Government. Thereafter, on 12.09.2017, respondent No.3 submitted an application to respondent No.1 and pointed out that flat and shop owners of Ekta Apartment Association consented for redevelopment. There are certain queries and, therefore, request was made to give clarification. Thereafter, on 19.09.2017, meeting with the Commissioner of respondent No.1 and office bearers of respondent No.3 took place and on the very same day, request was made in writing for redevelopment. It is pointed out that all the members including shop owners were agreeable for redevelopment. Thereafter, the request of respondent No.3 was processed and proposal for redevelopment of Ekta Apartment Association was sanctioned. It is submitted that respondent No.1 thereafter floated tenders for redevelopment. An advertisement was issued on 28.02.2018 in the concerned newspaper. After completing formalities of tendering, in the meeting dated 03.05.2018, it was resolved to accept the tender of respondent No.2 as the offer given by respondent No.2 was highest. Thereafter, the work order was issued in favour of respondent No.2 and tripartite agreement was executed between the respondents. It is, therefore, submitted that respondent No.1 has followed the procedure and looking to the larger public interest of the residents of Ekta Apartment and because of the unfortunate incident, which has occurred, the decision was taken to go for redevelopment as per the Policy of the State Government.

4.6 It is submitted that though the petitioners have given their consent in the meeting, now the petitioners are disputing their signatures. It is submitted that it is not the case of the petitioners that the concerned respondents have forged their signatures. The petitioners have not filed any criminal complaint against the concerned respondents for alleged forgery. Thus, the submission of the petitioners is nothing but an afterthought. It is, therefore, requested that this Court may not accept the said submission of the petitioners. 4.7 Learned advocate Mr. Desai, thereafter, submitted that the petitioners have not even communicated to respondent No.1 that they are withdrawing their consent given in the meeting nor they have at any point of time objected for redevelopment. Not a single letter is written by the petitioners to respondent No.1 or respondent No.3 objecting for the redevelopment. For the first time, in the present petition, the petitioners have taken objection against the redevelopment. Thus, this Court may not entertain this petition.

4.8 It is further pointed out by learned advocate Mr.Nirzar S. Desai that the petitioners have already shifted their business at new place at Gota. In spite of that, they have not stated the said aspect in the petition and, therefore, looking to the conduct of the petitioners, they are not entitled to get the reliefs, as prayed for, in this petition. He, therefore, requested that this petition be dismissed.

5. Learned Senior Advocate Mr.Anshin H. Desai appearing for respondent No.2 reiterated the submissions canvassed by the learned advocate Mr.Nirzar S. Desai on the points of non-joinder of proper party, suppression of material facts by the petitioners and with regard to the submission that the petitioners have not approached this Court with clean hands. It is submitted that the petitioners have filed Special Criminal Application alleging that respondent No.2 has given threat but no complaint or petition is filed alleging that somebody has forged the signatures of the petitioners on the document, which is produced at Page 09 of the compilation. It is submitted that in fact, one of the petitioners on behalf of all has signed the document at Page 09 of the compilation and given the consent for the purpose of redevelopment and, therefore, the submission canvassed on behalf of the petitioners that the signature at Page 09 is not of one of the petitioner, is nothing but an afterthought. The petitioners have, at no point of time, objected for redevelopment by addressing any communication to respondent No.3 or to respondent No.1 or to any other authority. Thus, while considering the submissions of the petitioners, their conduct is also required to be considered by this Court.

5.1 Learned Senior Advocate Mr.Anshin H. Desai further submits that there is no dispute with regard to the proposition of law laid down by the Honourable Supreme Court that the property right is considered to be a human right and the person cannot be deprived of his right without following procedure of law. However, the said decision would not be applicable to the facts of the present case. It is submitted that in the present case, the petitioners are not deprived of their property right but in fact, they will get the property after redevelopment as per the tripartite agreement entered into between the respondents and as per the plan sanctioned by the competent authority.

5.2 Learned Senior Advocate thereafter submits that the petitioners have not challenged the tripartite agreement and the decision rendered by the Bombay High Court would not be applicable to the facts of the present case.

5.3 Learned Senior Advocate for respondent No.2 would further contend that respondent No.1 Board has awarded the work order and entered into tripartite agreement with respondent No.2, after following the procedure and the petitioners have not challenged the procedure adopted by respondent No.1 for the purpose of redevelopment. It is submitted that as per the Guidelines of 2016 issued by the State Government for redevelopment, consent of 60% members is required. In the present case, though the petitioners have given the consent in the meeting, thereafter, at this stage, they are objecting for redevelopment. No other members have objected for redevelopment. 5.4 It is contended that respondent No.2 has spent more than Rs.7.5 crores till today and the estimated project cost is more than Rs.85 crores. It is submitted that as per the tripartite agreement, project is required to be completed by respondent No.2 within time frame of thirty-six months and, therefore, the reliefs prayed for by the petitioners may not be granted by this Court. At this stage, it is submitted that as per the tripartite agreement, the petitioners will be paid a sum of Rs.18,000/

towards rent per month to each shop owned by the petitioners and Rs.3 lacs per shop towards shifting charges and it is not in dispute that the petitioners have already shifted their business at Gota and, therefore, they will not suffer any hardship because of ongoing demolition. It is further contended that once the redevelopment work is over, the petitioners will be given a shop against each shop having 25% more area than the actual area of the shop at the time of allotment, which would go to show that each and every aspect of hardship that the shop owner may face has been taken care of and, therefore, this Court may dismiss the petition.

5.5 Learned Senior Advocate Mr.Anshin H. Desai has placed reliance upon the decisions rendered by the Honourable Supreme Court in the case of Margaret Almeida and others vs. Bombay Catholic Cooperative Housing Society Limited and others reported in (2013) 6 SCC 538 and in the case of Muniraj R. Kurmi and others vs. State of Maharashtra and others reported in (2017) 5 SCC 204.

5.6 Learned Senior Advocate Mr.Desai would, therefore, urge that this petition be dismissed.

6. Learned Senior Advocate Mr.Y.N. Oza appearing for newly added respondent No.3 vehemently opposed this petition on the ground that the petitioners have suppressed material facts and, therefore, this Court may not exercise equitable jurisdiction in favour of such petitioners. Learned Senior Advocate Mr.Oza has also reiterated the submissions canvassed by learned advocate Mr.Nirzar S. Desai appearing for the respondent Board on the point of consent given by almost all the members of the Association and the procedure is followed by respondent No.3 for the purpose of redevelopment. He has also contended that because of the incident, which has taken place in Block No.30, in which, two persons died, a decision was taken to go for the redevelopment. It is submitted that respondent No.3 has followed the proper procedure and in larger public interest of the residents of the Ekta Apartment, tripartite agreement is executed. It is further submitted that one of the petitioners has given the consent and put his signature in the meeting. The said consent was never withdrawn, nor the petitioners have objected at any point of time for redevelopment. It is submitted that when respondent No.1 has issued the advertisement for redevelopment, the petitioners were aware about the same. Similarly, when demolition work was started in other blocks, the petitioners were also aware about the redevelopment at that stage and the other persons of Block No.28 have also started vacating their premises in June-July, 2018. Demolition work started in August, 2018. In spite of that, with malafide intention, the petitioners waited and at last moment, the present petition is filed.

6.1 Thus, from the conduct of the petitioners, it can be said that there is acquiescence on the part of the petitioners in the redevelopment work and, therefore, it is not open for the petitioners to challenge at this stage.

6.2 It is further submitted that all the members of respondent No.3 will get better facility as per the tripartite agreement. He has also referred the Stability Certificate given by the Consulting Engineer and Government Registered Valuer. 6.3 Learned Senior Advocate Mr.Oza would further contend that respondent No.3 has taken the decision for redevelopment of Ekta Apartment in the larger public interest and in the interest of the residents and shop owners of the Ekta Apartment. All the members will be benefited and merely because, one or two members are objecting for

redevelopment and, that too, at this belated stage, after giving their consent at the initial stage, this Court may not consider their request and the petition be dismissed. 6.4 Learned Senior Advocate Mr.Oza has placed reliance upon the following decisions:

- (1) State of Haryana and Ors. vs. Devi Dutt and Ors. reported in (2006) 13 SCC 32 (2)
- Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Ors. reported in (2012) 8 SCC (3) B.R. Kakar vs. Institute for Plasma Research reported in (2000) 4 GLR 618

7. In rejoinder, learned Senior Advocate Mr.Mehul S. Shah appearing for the petitioners submitted that the petitioners have filed draft amendment on 20.12.2018, by which, the petitioners seek to join the State of Gujarat, Secretary, Urban Housing and Urban Development Department as party respondent. It is submitted that the petitioners will not be given shops at the ground floor but they are offered shops at the first floor and, therefore, the petitioners are not agreeable for such arrangement. It is further submitted that no tender documents are produced by the respondents before this Court. It is submitted that though in the affidavit in rejoinder filed by the petitioners, they ask the respondents to produce the sanction plan, however, sanction plan is not produced before this Court. It is once again contended that consent of 100% members is required as per the communication addressed by respondent No.1 to respondent No.2 and, therefore, in absence of consent of all the members, the respondents could not have started work of redevelopment. It is, therefore, urged that this Court may allow this petition.

8. Having heard learned advocates appearing for the parties and having gone through the material produced on record, it is revealed that the petitioners are owning and occupying Shop Nos.215, 216 and 217 in Block No.H/28 of Ekta Apartment constructed by the Gujarat Housing Board. It is revealed that an unfortunate incident occurred on 23.08.2017 in Ekta Apartment, Block No.30, where overhead water tank fell down and because of the same, part of Block No.30 collapsed, which resulted into death of two persons and several other residents were injured. It has come on record that because of the said incident, the officers of respondent No.1 as well as AMC and Torrent Power rushed to the site. The AMC asked the residents of the said block to vacate the premises and also sealed the shops and flats. The Torrent Power also disconnected electricity connection of Block No.30 of Ekta Apartment. Immediately, thereafter, the AMC issued notice dated 24.08.2017 to the occupiers of the flats blockwise including the occupiers of Block No.28. In the present case, the dispute is with regard to Block No.28. In the said notice, it was stated that the blocks are in the worst condition and, therefore, the occupier should get it repaired after taking guidance from the Structural Engineer. It is not in dispute that the aforesaid notice was served to the petitioners. However, the petitioners have not produced a copy of the same along with the petition. It further transpires that the flat owners convened extraordinary general meeting and unanimously passed a resolution for redevelopment. In the said meeting, members of Block No.28 have also participated and voted in favour of redevelopment. Thereafter, general meeting was convened to decide further course of action. It has also come on record that respondent No.3 appointed Mr.Shailesh Khandwala, who is Consulting Engineer and Government Registered Valuer. The said expert, after examination of all the blocks, submitted his report, copy of which is produced at Page 181 of the compilation. It is specifically stated in the said report that "these building blocks even after extensive repair works cannot become safe and sound for human habitation. If he has to make a

decision, he would prefer to reconstruct them to make them habitable again."

It transpires from the record that on the basis of the said opinion given by the expert, the general meeting was convened by respondent No.3 and it was resolved to go for redevelopment as per the Policy of 2016 framed by the State Government. Accordingly, respondent No.2 submitted an application to respondent No.1 and pointed out that the flat and shop owners of respondent No.3 have given consent for redevelopment. On 19.09.2017, meeting took place between the officers of respondent No.3 and Commissioner of respondent No.1 and on the same day, request was made in writing for redevelopment. From the document produced at Page□9, it is clear that one of the petitioners remained present in the said meeting and put his signature on behalf of all the petitioners. At this stage, it is required to be noted that during the course of submission, learned Senior Advocate appearing for the petitioners has contended that the signatures on the document at Page□09 are not the signatures of the petitioners. Thus, he has disputed the said signatures. However, it is required to be noted that in the rejoinder filed by petitioner No.3 against the reply filed by respondent No.2 at Page□40 of compilation, the petitioner has made following averments:

"This also goes to show that from page No.107 to page No.109 are only signatures without there being any content thereof. It is also required to be noted that here that under the law, consent of any person has to be free consent, with clear understanding of the same and with proper application of mind. If by fooling any person or by withholding content of any document; consent is obtained, then it can not be said to be valid consent under the law. Hence, as far as present petitioners are concerned, it can not be said that they have given consent of redevelopment."

Thus, from the aforesaid averments made on affidavit, it is clear that the petitioners have not disputed their signatures on the document produced at Page□09 of the compilation. However, it is stated that if the consent is obtained by withholding the content of any document or by fooling any person, then such consent cannot be said to be valid consent under the law. The petitioners have not at all stated in the petition or in the rejoinder on affidavit that the signatures of the petitioners produced at Page□09 of the compilation are not their signatures and somebody has forged the same. Thus, the contention of the petitioners on this point is not required to be accepted.

9. At this stage, it is also required to be noted that during the course of submission, learned advocate Mr.Nirzar S. Desai has placed on record the Government Resolution dated 11.02.2016 issued by the State Government whereby the Policy of Redevelopment of 2016 came to be introduced. As per the said policy, consent of minimum 60% of the members is required. The petitioners have not challenged the Government Resolution dated 11.02.2016 but Policy of 2016 which was introduced as per the Government Resolution dated 11.02.2016 is under challenge in this petition.

10. From the material placed on record, it is clear that the petitioners have never objected for redevelopment before any of the authorities and for the first time, in the present petition, an objection is raised against the redevelopment. It transpires from the record that at the relevant point

of time, the petitioners were carrying on their business in the shops situated at Ekta Apartment and the members of Block No.28 have started vacating their premises in June-July, 2018 and respondent No.2 has started demolition work in August, 2018 in other blocks. In spite of that, the petitioners have not raised any objection and at the last moment, in October, 2018, the present petition is filed. Thus, looking to the conduct of the petitioners, they are not entitled to claim the equitable reliefs prayed for in the present petition.

11. From the tender document, which is produced on record, during the course of submission by learned advocate for respondent No.1, it is revealed that for implementation of the redevelopment of existing Housing Scheme, the private developer has to obtain consent of 60% of the members and the work order was required to be issued to the selected bidder after successful finalization of 80% beneficiaries with consent by the selected bidder in consultation with respondent No.1. In the said tender document at internal Page No.14, it is stated as under:

"For implementation of the redevelopment of existing housing scheme on field, the private developer will obtain consent of 60% of the members, including those taken by way of resolution passed by existing society/ association. The concerned public agency and the society/ association will facilitate the process.

Work Order shall be issued to the selected bidder after successful finalization of 80% beneficiaries with consent by the selected bidder in consultation with Gujarat Housing Board."

In pursuance of the said tender document, respondent No.2 submitted its offer and ultimately, selected after following due procedure. Thus, reliance placed by the learned advocate for the petitioners on certain internal communications, which indicate obtaining 100% consent of the members, would not render any assistance to him.

12. During the course of submissions, learned advocate Mr.Nirzar S. Desai has shown original communication dated 19.09.2017 addressed by respondent No.3 to respondent No.1 along with its communication. From the said document, it is clear that as per the said communication, two documents were attached i.e. redevelopment committee and consent of the members. Internal Page Nos.1 and 2 are the points of redevelopment and redevelopment committee and from internal Page Nos.3 to 6, it is clear that on the said pages, table is given showing block numbers, names and signatures of the members. Thus, from the aforesaid documents produced during the course of hearing of the present petition, this Court is of the view that submission canvassed by the learned counsel for the petitioners raising doubt about the internal Page Nos.1 and 2 of the communication dated 19.09.2017 is misconceived.

13. It is further revealed from the record that as per the request of the members of respondent No.3, respondent No.1 processed the request and the proposal of respondent No.3 for redevelopment was sanctioned as per the scheme framed by the State Government. Respondent No.1 has, thereafter, floated tenders for redevelopment. Advertisement was issued on 28.02.2018 and, thereafter,

respondent No.1 has completed the formalities and in the meeting dated 03.05.2018, it was decided to accept the tender of respondent No.2 as the offer given by respondent No.2 was highest. Work order was also issued in favour of respondent No.2 and, thereafter, tripartite agreement was executed between the respondents. Accordingly, till date, respondent No.2 has paid and invested an amount approximately Rs.7.5 crores. Respondent No.2 started demolition work in other blocks and residents and shop owners of Block No.28 have also vacated the premises and, thereafter, respondent No.2 has started demolition work in Block No.28 also. It is not in dispute that the petitioners have shifted their business at Gota and at the last moment, the present petition is filed for the reliefs prayed for in the petition.

14. It is not in dispute that the petitioners had not joined Ekta Apartment Association as party respondent though certain averments are made in the petition against the said Association. When the Civil Application was filed by the said Association for joining as party respondent, this Court allowed the said application and thereby respondent No.3 is joined as party respondent. It is further required to be noted that though the petitioners have challenged the Policy of Redevelopment of 2016 framed by the State of Gujarat, the State of Gujarat is not joined as party respondent and only draft amendment was submitted on 20.12.2018. The petitioners have also suppressed the fact that the AMC has issued notice to them wherein direction was given to repair the dilapidated/damaged part of the building after getting guidance from the Structural Engineer. Though the said notice was issued to the petitioners on 22.09.2017, the petitioners have not appointed any Structural Engineer for repairing of the damaged part of the building. On the contrary, respondent No.3 appointed Mr.Shailesh Khandwala, who is Government Approved Engineer and Valuer. However, when the redevelopment work was started and after filing of the present petition, when the concerned respondent has produced a copy of the report of the Structural Engineer, the petitioners have produced a copy of the Report dated 17.12.2018 given by one Mr.Chintan Himanshubhai Mehta, who is private Structural Engineer. If the Certificate produced at Page 53 of the compilation is carefully examined, it is revealed that though the said expert had visited the site on 18.09.2018, he had given opinion on 17.12.2018 only. Why the petitioners have waited for the opinion for a period of three months, is not coming on record. Thus, production of the said Report on the part of the petitioners does not inspire any confidence. Thus, the said report cannot be relied upon. Thus, looking to the overall conduct of the petitioners, they are not entitled to claim the equitable reliefs prayed for in the present petition.

15. Learned Senior Advocate Mr.Mehul S. Shah for the petitioners has placed reliance upon the decision rendered by the Bombay High Court in the case of Tejoomal Lakhmich Vs. M.J. Talegaonkar and others (supra), in support of his contention that respondent No.3 is unregistered Association and, therefore, it has no authority to enter into tripartite agreement with respondent Nos.1 and 2. However, it is required to be noted that the petitioners have not challenged the tripartite agreement entered into between the respondents and, therefore, this Court is not inclined to accept this submission in the facts and circumstances of the present case.

16. Learned Senior Advocate has also placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the cases of Chairman, Indore Vikas Pradhikaran Versus Pure Industrial Cock and Chem. Limited (supra), Vimalben Ajitbhai Patel vs. Vatsalabeen Ashokbhai Patel (supra) and

Lalaram and others vs. Jaipur Development Authority and another (supra) in support of his contention that property right is considered by the Hon'ble Supreme Court as a human right and, therefore, the petitioners cannot be deprived of their property right without following process of law. This Court cannot dispute the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid cases, however, in the facts and circumstances of the present case, as discussed hereinabove, the said decisions would not rendered any assistance to the learned Senior Advocate for the petitioners. It is once again required to be noted that on 23.08.2017, an unfortunate incident has occurred in Block No.30 of Ekta Apartment where overhead water tank fell down and because of the said incident, part of Block No.30 collapsed which resulted into death of two persons and several other residents were injured. AMC issued notice to the residents of all the blocks of Ekta Apartment and, thereafter, the Ekta Apartment held extraordinary general meeting of the flat owners. Members of Block No.28 have also participated and voted in favour of redevelopment and, thereafter, appointed Consulting Engineer and Government Registered Valuer, who has given opinion for reconstruction. Thereafter, meeting was held with the Commissioner of respondent No.1 and as discussed hereinabove, after following the procedure, as per the Policy of 2016 framed by the State Government, offer of respondent No.2 was accepted and work order was issued in favour of respondent No.2 for the purpose of redevelopment. Thus, in peculiar facts and circumstances of the present case, when the decision of redevelopment was taken in larger public interest by respondent No.1 and respondent No.3, this Court is of the view that such decision cannot be interfered with.

17. From the tripartite agreement produced on record, it is revealed that the petitioners and other shop owners will get Rs.18,000/□towards rent per month and Rs.3,00,000/□per shop towards shifting charges. The petitioners will be given shop at the first floor against each shop having 25% more area than the actual area of the shop. Thus, when the petitioners will be getting property with 25% more carpet area and will be paid Rs.18,000/□towards rent per month during the period of redevelopment as well as shifting charges, this Court is of the view that the property right of the petitioners would not be affected.

This Court is of the considered view that in such redevelopment process when almost all the members except few have given their consent for redevelopment, at the instance of few members, majority members cannot be made to suffer. The construction of the building is very old and the building is damaged. Therefore, in the interest of the residents of such building, the decision of redevelopment is taken in good faith and in the interest of members of the building. Such process cannot be stalled at the instance of few members, who object for such redevelopment for their personal interest.

18. In the present case, as observed hereinabove, when the decision is taken for redevelopment in larger public interest and because of the incident which has occurred in Block No.30, this Court is not inclined to interfere with such decision of redevelopment.

19. In view of the aforesaid discussion, the petitioners are not entitled to get reliefs as prayed for. Accordingly, the petition is dismissed.

(VIPUL M. PANCHOLI, J) piyush After the judgment is pronounced, learned advocate for the petitioners requested that this judgment be stayed for a period of two weeks so that the petitioners can approach before the higher forum. The said request is opposed by the learned advocates for the respondents.

In view of the reasoning recorded by this Court in the present judgment, request of the petitioner is rejected.

(VIPUL M. PANCHOLI, J) piyush