IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L) NO. 20834 OF 2024

SJK Buildcon LLP ...Petitioner
Versus
Kusum Pandurang Keni & Ors. ...Respondents

Mr. Mayur Khandeparkar *a/w Sarthak Utangale i/b M/s.Utangale & Co., Advocates for the Petitioner.*

Mr. Abhishek Kothari *i/b Rishabh Botadra, Advocate for Respondent Nos.1 & 2.*

CORAM : SOMASEKHAR SUNDARESAN, J.
RESERVED ON : April 8, 2025
PRONOUNCED ON : April 16, 2025

Context and Factual Background:

1. This is yet another templated Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***") seeking appointment of a Court Receiver to take possession of premises from "occupants" in connection with redevelopment of a building.

2. The catch is that some of the "occupants" sought to be removed under this jurisdiction are not only statutorily protected tenants under the Maharashtra Rent Control Act, 1999 ("***Rent Act***") and its predecessor

legislation the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("***Bombay Rent Act***"), but they also have a decree in their favour, thanks to two concurrent findings of the relevant rent courts having jurisdiction.

3. The Petitioner, SJK Buildcon LLP ("***Developer***") has executed a Development Agreement dated February 12, 2024 ("***Development Agreement***") with Respondents No. 1 and 2, namely, Ms. Kusum Pandurang Keni and Mr. Ninad Ajay Keni ("***Landlords***") to redevelop a building called Keni House. The Developer is also a recipient and beneficiary of a General Power of Attorney issued by the Landlords to act on their behalf. The arbitration agreement is contained in the Development Agreement, and there is no dispute or difference between the parties to the arbitration agreement.

4. The Original Respondent No. 3 was Mr. Umanath Saligram Mishra ("***Mishra***"), a tenant on whose demise, his legal heirs were made parties ("***Protected Tenants***"). Respondent No. 4, Mrs. Supriya Sengupta ("***Sengupta***") is the eventual legal heir of the Late Mr. Sudhir Sengupta, the original tenant in respect of a flat in Keni House. The Protected Tenants and Sengupta are collectively labelled as "non-cooperating tenants/occupants" in the Petition. Keni House, built in 1962, is said to have 22 tenements, of which possession of 18 tenements are with tenants while four are in the possession

of the Landlords. The Developer is an LLP and one of its partners is also said to be a tenant.

Protected Tenants are Decree-holders:

5. The Petition is eloquently silent about one vital fact. The Protected Tenants are not just protected tenants, they are also beneficiaries of a decree with two concurrent findings of the special rent courts holding that they are statutorily protected as tenants in respect of the premises they occupy as tenants. The Petition accuses the Protected Tenants of being illegal occupants undertaking the business of flour mill in the tenanted premises. The pleadings also they omit the fact that the two concurrent findings in favour of the Protected Tenants were left unchallenged by the Landlords (who support the Petition) and that the Landlords did not even pursue further legal challenges against the decree passed in favour of the Protected Tenants. This is a facet explicitly made known to the Developer by the lawyers of the Protected Tenants when the Developer called upon the Protected Tenants to vacate their premises. The correspondence is annexed to the Petition without any pleadings of these foundational facts.

6. RAD Suit No. 1980 of 2004 was decreed by the Small Causes Court by a judgement and decree dated October 20, 2012 ("***First Judgement***")

declaring Tenancy Rights in Ganesh Flour Mill in favour of the Original Respondent No. 3. The Landlords filed an appeal against the First Judgement by filing First Appeal No. 278 of 2014. By a judgement dated March 13, 2015 ("***Appellate Judgement***"), the Landlords' appeal challenging the First Judgement was dismissed. The Appellate Judgement was not challenged and therefore the position of the Protected Tenants being beneficiaries of statutory protection against eviction outside the scope of tenancy laws, as declared in the First Judgement and the Appellate Judgement, has became absolute.

7. The Development Agreement has been executed nearly a decade later, and this Petition seeks to remove the Protected Tenants under oversight of this Court invoking the jurisdiction of Section 9 of the Act, a provision that enables this Court to take temporary interim measures to protect the subject-matter of the arbitration agreement.

8. The Petition simply ignores the position in law decreed as aforesaid and accuses on oath, the Protected Tenants of being illegal occupiers of a "garage". Conveniently, the Landlords have filed a reply endorsing that the Protected Tenants are illegally using a garage as a flour mill and are claiming

that the garage is an industrial unit to claim an industrial unit in *lieu* of the flour mill.

Sengupta – Supreme Court Ruling:

9. The fortunes of Sengupta have followed a different path. The original tenant Mr. Sudhir Sengupta is alleged to have been irregular in payment of rent leading to institution of RAE&R Suit No. 313/1024 of 1983 for recovery of possession and arrears of rent, which led to judgement dated June 7, 1995 ("***First Sengupta Judgement***") by the Small Causes Court, Mumbai, dismissing the suit. Appeal No. 359 of 1995 filed by the Landlords challenging the First Sengupta Judgement, was allowed by a judgement and decree dated June 18, 1999 ("***Appellate Sengupta Judgement***"), which was challenged in Writ Petition No. 5355 of 1999 before this Court. During the pendency of the Writ Petition, Mr. Sudhir Sengupta passed away, which led to Mrs. Ronen Sengupta being brought on record as his legal heir, who too passed away and led to Sengupta being brought on record as the legal heir. The Writ Petition challenging the Appellate Sengupta Judgement was dismissed by a judgement passed by a Learned Single Judge of this Court, dated September 24, 2024 ("***Writ Dismissal***"), granting Sengupta time until December 23, 2024 to vacate the premises. The Writ Dismissal was challenged before the Supreme Court in Special Leave Petition (C) 30618 of

2024, which was dismissed by an order dated December 20, 2024 ("***SC Dismissal***"), with the Supreme Court extending time to vacate until January 31, 2025. Sengupta is yet to vacate and proceedings alleging contempt are said to have been filed in the Supreme Court.

Analysis and Findings:

10. It is in this backdrop that the intervention sought from this Court has to be considered. The intervention sought is to appoint a Court Receiver to take possession of the premises tenanted to the Protected Tenants and to Sengupta, by use of force, if necessary, and to hand over the same to the Developer. The other intervention sought is to direct the Protected Tenants and Sengupta to hand over the premises occupied by them and to direct them to accept "agreed rent, shifting charges, brokerage and corpus amount etc. within the time bound period" as this Court may deem fit and proper. The jurisdiction sought to be exercised for this purpose is Section 9 of the Act, which enables the making of temporary interim measures pending arbitration, to protect the subject matter of the arbitration agreement.

11. Since this Petition is a templated approach to invoking this jurisdiction to evacuate members of co-operative housing societies who hold up redevelopment on the basis of their individual divergent views raised in

conflict with the collective will exercised on their behalf by the society, it is important to remember that there is no society involved in the matter at hand. The tenants who are presented as hurdles to the redevelopment have their own individual sovereign rights which have not been given away to a collective society to be exercised on their behalf. Sengupta has lost all the way to the Supreme Court and has outlasted the borrowed time granted to her by the Supreme Court for vacating her premises and handing them over to the Landlords. However, the Protected Tenants are beneficiaries of a decree that has remained unchallenged for nearly a decade.

12. However, The Landlords continue to label the Protected Tenants as illegal occupants, as does the Developer who holds a General Power of Attorney from the Landlords to do everything that the Landlords can do to ensure the redevelopment.

13. It is in this context that it would be necessary to reproduce the relevant provisions of Section 9 of the Act, and examine them with particular regard to the facts of the case at hand:

> ***9. Interim measures, etc., by Court.***— *(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court*—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

*(ii) **for an interim measure of protection** in respect of **any of the following matters**, namely:—*

*(a) the **preservation**, interim custody or sale **of any goods** which are the subject-matter of the arbitration agreement;*

*(b) **securing the amount in dispute** in the arbitration;*

*(c) the detention, **preservation** or inspection **of any property** or thing **which is the subject-matter of the dispute in arbitration**, or **as to which any question may arise therein** and authorising **for any of the aforesaid purposes** any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*

*(d) **interim injunction or the appointment of a receiver**;*

*(e) **such other interim measure of protection** as may appear to the Court to be just and convenient,*

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

*(2) **Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection** under sub-section (1), the **arbitral proceedings shall be commenced within a period of ninety days from the date of such order** or within such further time as the Court may determine.*

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that

circumstances exist which may not render the remedy provided under section 17 efficacious.

[Emphasis Supplied]

14. Even a plain reading of the foregoing would show that the jurisdiction of Section 9 of the Act is one that is in aid of arbitral proceedings. The measures that the Court may issue are meant to be aimed at protecting the subject-matter of the dispute which is meant to be resolved by arbitration. To begin with, there has to be a dispute between the parties to the arbitration agreement. Indeed, it is possible that measures to adjust and balance the interests of the parties may impact third parties and therefore, it would become necessary to hear such third parties. This is the context in which even parties who are not signatory to the arbitration agreement are required to be made parties to proceedings under Section 9 so that any measures that are may be necessary to protect the subject-matter of the dispute covered by the arbitration agreement are considered taking into account what such third parties have to say in the matter.

15. It is trite law that grant of interim reliefs that impact a third party can never be prohibited, and is indeed envisaged, as is seen from a long legacy of judgements on the subject, which are not necessary to reproduce, simply to avoid prolixity. However, one must not forget that the interim relief sought

by a party to an arbitration agreement has to be in aid of securing and preserving the subject matter of the disputes between the parties to the arbitration agreement. Incidental to such measures may emerge an impact on a third party, and merely because such person is not a party to the arbitration agreement, it would not follow interim relief impacting the third party cannot be granted.

16. However, it is a totally different matter if parties to the arbitration agreement have no dispute and are actually quite aligned but jointly seek protection against a third party. Even in this nuanced space, one may argue that an interim measure may be considered when a potential dispute is brewing between the parties to the arbitration agreement and to adjust equities and protect the subject matter of the dispute (to ensure that the arbitration is not rendered infructuous), measures that affect a third party may be considered. However, what lies at the core of this foundation is a dispute between the parties that would lead to arbitration.

17. Without such a foundational fact, the Section 9 jurisdiction would not, in my opinion, be available against the world at large to solve every conflict that any party to the arbitration agreement may have against any third party, with a suggestion that resolving that conflict would avoid arbitration. Such a

reading would make the Act, essentially a procedural law that governs the conduct of arbitration, with jurisdiction to effect substantial but temporary interim interventions solely to aid arbitration, as being a substantive law that can solve legal conflicts that do not form subject matter of the arbitration, merely because of some link to the parties to the arbitration, or to some financial hardship to one of the parties to the arbitration.

18. The core and noteworthy pleading in this regard in the Petition, is reproduced below:-

> *It is pertinent to note that* ***redevelopment project, which is in the benefit of the landlord and all the tenants cannot be stalled*** *by minority tenants.* ***Tenants have limited rights*** *and cannot dictate the terms of the development. Under the Development Agreement, it is the* ***responsibility of Respondent Nos. 1 & 2 to ensure speedy eviction*** *of the tenants for the redevelopment. However, since Respondent Nos. 3 & 4 have refused to vacate their structures,* ***the Petitioner has to bear the additional costs of transit rent for the other tenants*** *while the project remains in a state of limbo.*
>
> *[**Emphasis Supplied**]*

19. Since the Section 9 jurisdiction has been invoked, a *prima facie* view has to be taken on the factual matrix and the application of the law to such factual matrix. It is evident from the pleading extracted above that the Developer and the Landlords conceive the reliefs desired to be in the nature of "*speedy eviction*". The First Judgement and the Appellate Judgement

place the Protected Tenants in the position of being "lawful tenants" in respect of Ganesh Flour Mill. The Protected Tenants have been carrying on flour mill activity with municipal permissions, and it is rather difficult to come to a *prima facie* opinion that the conduct of the flour mill is illegal. Yet, the pleadings in the Petition repeatedly allege that the Protected Tenants are illegal occupants, taking no note of the First Judgement and the Appellate Judgement, facets that are indeed referred to by the Developer in its correspondence with the municipal authorities to process permissions necessary for the redevelopment.

20. The apparent objective of securing eviction through the Section 9 proceedings, *prima facie*, appear to lie in the jurisdiction of Section 16 of the Rent Act. These provisions govern the subject of taking of possession of premises for purposes of demolition and redevelopment. The relevant extracts of Section 16 are reproduced below:

> ***16. When landlord may recover possession****.— (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25,* ***a landlord shall be entitled to recover possession of any premises if the court is satisfied*** *—*
>
> *(a) to (h)* *****
>
> *(i) that the* ***premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them*** *and such*

demolition is to be made ***for the purpose of erecting new building on the premises sought to be demolished****; or*

(j) to (n) *****

(2) to (5) *****

(6) ***No decree for eviction shall be passed on the ground specified in clauses (i)*** *or (j) of sub-section (1),* ***unless the Court is satisfied****,—*

(a) that the ***necessary funds for the purpose of the erection of new building*** *or for erecting or raising of a new floor or floors on the terrace* ***are available with the Landlord****;*

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, by-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the ***landlord has given an undertaking****,—*

(i) ***that the plans and estimates, for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation*** *in the building sought to be demolished subject to a variation of five per cent. in area;*

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be on the floor to floors;

*(iii) that where the carpet area of the premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) **the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent, in writing, of the tenant or tenants concerned to accept the premises with larger area**; and **on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area of any permissible use**;*

*(iv) that **the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months**, from the date he recovers possession of the entire premises;*

*(v) **that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months** from the said date:*

*Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, **the court may, by order, for reasons to be recorded, extend the period by such further periods, not exceeding three months at a time as may, from the time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate**.*

*(7) **Where the possession of premises is recovered on the ground specified under clause** (g), (h), **(i)** or (j) **of sub-section (1)** and **the premises and transferred by the landlord**, or by operation of law before the tenant or tenants are placed in occupation, **then such transfer shall be subject to the rights and interests of such tenants**.*

[Emphasis Supplied]

21. In the facts of the case, the Landlords are transferring their rights to the Developer who is redeveloping Keni House. The entitlement being offered to the Protected Tenants, in the context of the alleged illegality (in the teeth of the decreed position being that the tenancy and the usage for the flour mill is legal) is said to be an alternate premises identical in area to what the Protected Tenants currently have.

22. The flour mill, which is a front-facing standalone premises are being sent to the back of the building with doubts over accessibility that may emerge when the co-operative society that would be formed after the redevelopment makes its own rules and regulations on public access to the premises. While these facts may raise equities in favour of and against the Protected Tenants, indeed, the provisions of Section 16 of the Rent Act extracted above, govern the terms on which the statutory protection decreed as being available to the Protected Tenants is not to be eroded.

23. Under Section 33 of the Rent Act, the forum to adjudicate what is sought in this Section 9 Petition, is also explicitly and exclusively in the domain of the the Small Causes Court. Section 33 of the Rent Act is a *non-obstante* provision and holds the field notwithstanding anything contained in any other law for the time being in force. Therefore, to invoke the Act and the

jurisdiction under Section 9 of the Act, in the facts of the case and the reliefs sought in this Petition which comport to Section 16(1)(i) of the Rent Act, gives rise to a direct conflict between the Act and the Rent Act. That apart, in the instant case, the rent courts under the Rent Act have already ruled on the subject and are required to be approached for the relief sought from this Court. The rent courts having jurisdiction in the matter have already declared the tenancy over the flour mill as being legal and protected. The Rent Act has provisions enabling approaching the rent courts seeking possession in the specific circumstance of redevelopment. The contours of the jurisdiction and the substantive conditions to be met are stipulated in the Rent Act. Such jurisdiction of the Small Causes Court cannot be simplistically circumvented by having a counterparty of the Landlords i.e. the Developer, the holder of all powers of the Landlords for the redevelopment of Keni House praying to this Court to direct vacation of the tenanted premises, simply ignoring the decreed status of the Protected Tenants.

SARFAESI and Rent Act – a benchmark conflict:

24. In this context, it would be worthwhile to note a similar question of conflict between legislation protecting possession of tenants and the powers conferred under other legislation. Such conflict arose in the context of the power to take possession under the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 ("***SARFAESI Act***"). In ***Bajarang Shyamsunder***[1], the Supreme Court resolved the conflict between the *non-obstante* provisions in each of the Rent Act and the SARFAESI Act, to hold, among others, that secured creditors could not take possession of premises over which tenancy pre-existed the creation of a mortgage. Explaining and clarifying the ratio in ***Harshad Govardhan Soundagar***[2] and ***Vishal Kalsaria***[3], the Supreme Court explicitly held that the rights of a rightful tenant cannot be compromised by proceedings under the SARFAESI Act.

25. Now, juxtaposing that state of the law (where the SARFAESI Act had an explicit *non-obstante* provision) with the jurisdiction under Section 9 of the Act, which simply provides for temporary interim measures in aid of arbitration and that too without any non-obstante provision, it would necessarily follow that simply by purporting to invoke Section 9 of the Act, the declared protection that is a product of being tested by the jurisdictional rent courts cannot be simplistically effaced. Directing the Protected Tenants to hand over possession to the Developer for the redevelopment commissioned by the Landlords would be the "speedy eviction" that the

[1] *Bajarang Shyamsunder Agarwal vs. Central Bank of India and Anr.* – ***(2019) 9 SCC 94***
[2] *Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd.* – ***(2014) 6 SCC 1***
[3] *Vishal N. Kalsaria vs. Bank of India* – ***(2016) 2 SCC (Civ) 452***

parties to the Development Agreement have in mind, and would circumvent the statutory protection already considered and accorded to the Protected Tenants.

26. In this light, entering upon an analysis of whether the Protected Tenants are being offered an upgrade or a downgrade in what they would enjoy, and returning findings on whether equities are in favour of directing them to vacate or otherwise, is not something I must embark upon in the facts of this case. In view of the evident lack of jurisdiction, it would be inappropriate to comment on the same.

Conclusion:

27. Therefore, considering that there is an explicit and exclusive jurisdiction to deal with the very same issues agitated in this Petition, and to provide the very same reliefs sought in this Petition, and since in my opinion, a templated approach usually adopted to seek vacation of dissentient members of a co-operative society has been incongruously adopted in this Petition under Section 9 of the Act, no interim measures are called for in disposal of this Petition.

28. Therefore, there is no question of this Court issuing directions to make arrangements for the precise location of the flour mill or provision of other premises in *lieu* of the statutory rights enjoyed by the Protected Tenants.

29. As regards Sengupta, it is evident that the Supreme Court has upheld the Writ Dismissal. Evidently, Sengupta has outlasted the time granted by the Supreme Court and ought to abide by the Supreme Court's directions. Indeed, contempt proceedings have been filed on behalf of the Landlords in the Supreme Court. Since the Supreme Court is seized of the contempt proceedings, it would be inappropriate for this Court to set terms on which the alleged contempt may be purged or to issue directions in that regard.

30. Consequently, this Petition is ***finally disposed of*** without directing any interim measures as sought or otherwise. The Developer and the Landlords shall ensure that they abide by the rule of law and follow such steps as advised, respecting the pre-existing tenancy rights of the Protected Tenants.

31. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]