

Huges LLP v. Khernagar Adarsh CHS

Citation: 2025: BHC-OS:13805

Facts of the case

Khernagar Adarsh co-operative housing society is an old residential society located in Bandra east, Mumbai where due to structural deterioration, the society resolved to undergo redevelopment. After evaluating multiple proposals, the society appointed Huges real estate developers LLP as the developer and a development agreement was executed between the two parties. However, after the agreement was signed, disputes arose regarding delays, alleged non-compliance, dissatisfaction among members and attempted termination by the society the developer approached the Bombay high court claiming the termination was illegal, while the society argued the developer failed to meet obligation.

Issues before the court

1. Whether the society was justified in terminating the development agreement.
2. Whether the developer fulfilled contractual obligation.
3. Whether injunction should be granted restraining the society from appointing another developer.

Arguments

Appellant (developer)

The society entered into an agreement and then cancelled it incorrectly. The delay was due to obtaining government permissions. The development department is not responsible for this. The society is biased, and the decision was taken with biased motive and then the proper procedure for terminating the agreement was not followed. Then the society should be restrained from appointing a new developer, because the developer alleged that some members, after receiving good offers from other developers, they decided to transfer them, so his decision is biased and wrong. However, the developer said that primarily building plans were prepared, structural tests had been conducted and communication with the authorities was ongoing. Therefore, the society's statement that "no work was done" is incorrect.

Respondent (society)

Under the redevelopment law and the norms of MHADA/MCGM, the society has the right to terminate the agreement of a non-performing developer. The society cancelled the agreement only after following the proper General Body Resolution and the required due procedure. If an injunction is granted, the members will face great hardship, as they have already been waiting for redevelopment for a very long time. Additionally, the developer's claims of progress are misleading. The plans presented were incomplete, and the developer failed to show any substantial progress despite repeated opportunities. Therefore, the society's decision to terminate the agreement is lawful, justified, and in the best interest of the members.

Judgement

The Bombay high court examined the development agreement, correspondence, and actions of both parties. The court noted that redevelopment is a member centric process, and delays cause significant hardship. The society had raised concerns earlier and given opportunities to the developers to comply. The court held that the society's termination was not arbitrary because the developer had failed to comply with its obligations as per the Development Agreement. The high court denied developer's request for injunctive relief and upheld society's right to terminate the development agreement.

Conclusion

The court, in this case, prioritized the welfare and safety of society members over the business interest of the developers. It also emphasized on the actualization of the agreement terms by timely progress. Societies are free to terminate non-performing developers (or development agreements) if they refuse to abide by agreements obligations.

RP LEGAL