

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 5627 OF 2023

Lokhandwala Residency Towers Cooperative ... Petitioner
Housing Society Ltd.

Versus

The Municipal Corporation of Greater ... Respondents
Mumbai & Anr.,

Mr. Prateek Seksaria, Senior Advocate, Mr. Prathamesh Kamath, Mr. Nakul Jain, Mr. Yash Chheda, Mr. Rohit Agarwal, Mr. Mridul Sharma, Ms. Poonam Shrivastav, Mr. Atul Umekar, Ms. Saakshi Saboo i/b. M.S. Legal (Advocates & Solicitors (UK)) for the petitioner.

Mr. Narendra V. Walalwalkar, Senior Advocate a/w. Ms. Vandana Mahadik for respondent no. 1.

Mr. Pramod Bhosale, SEPB (U/S) Ward present.

Mr. Zal Andhyarujina, Senior Counsel, Mr. Karan Bhide, Mr. Dhawal Mehta, Ms. Tanvi Shah i/b. Wadia Ghandy & Co. for respondent no. 2.

**CORAM: G. S. KULKARNI
& R.N. LADDHA, JJ.**

DATED: 09 March, 2023

P.C.

1. This petition under Article 226 of the Constitution of India brings to the fore seminal issues, in regard to the safety measures to be adopted in the construction of super high-rise buildings and more particularly of the nature they are coming up in the contemporary times.
2. The trigger to this petition is an unfortunate incident, which had taken place on 14 February, 2023, arising from the high-rise construction being

undertaken by respondent no. 2 in respect of its project “Four Seasons Private Residences Phase I and Phase II”, situated at plot no. 1/136, Dr. E Moses Road, Near Jijamata Nagar, Worli, Mumbai – 400 018. The terrible incident was falling of a large cement block from the 52nd floor of the building which is under construction, which instantly killed two innocent persons, who were outside the premises of respondent no. 2.

3. The grievance of the petitioner is in regard to the suspended crane installed by respondent no. 2 on its project, the operation of which is according to the petitioner is likely to endanger human lives, in the event of any negligence and/or its inappropriate handling or any other cause which may arise therefrom. The petitioner contended that a lack of proper care, negligence/mishandling has caused the unfortunate incident on 14 February, 2023. The petitioner has placed on record wide concerns raised all over, on the happening of such incident. The concerns are in regard to fears and panic in those who are vulnerable, and the urgent need for a regime of safety to be brought about in such works.

4. The petitioner contends that in the past there were serious incidents, which were the subject matter of correspondence entered between the parties as also the police authorities, by drawing the Court’s attention to the letters dated 8 August, 2020 and 10 August, 2023 respectively of the petitioners and the

responses thereto of respondent no. 2, on the concerns raised by the petitioner. Our attention is also drawn to respondent no. 2's letter dated 12 August, 2020, as addressed to the petitioner, which is quite relevant in the present context. Respondent no. 2 in such letter has stated that the activity of shifting glass panels from the stacking area had commenced and there was some routine activity in progress since September, 2019 and as per practice, the weather forecast was also examined. Respondent No.2 recorded that crane operation was halted, when there was a "red alert" issued by the MCGM on the weather conditions. The crane operator had also verified the wind pressure and it was found to be within limits at the relevant time. It was also stated that the operations and safety domain personnel were on duty during the course of incident which had taken place, namely, the facade construction manager, the crane operator, the signalman and the safety officers who were competent by qualification and reasonably experienced to perform their designated duties. Respondent no. 2 also commented on the risk analysis and the procedure of shifting every type of material by use of the crane. Accordingly, by such letter, respondent no. 2 placed on record that all precautions were being taken in undertaking construction of such nature. It however, appears that although such safety measures were informed to be taken in the course of execution of such works, nonetheless the unfortunate incident of falling of a cement block took place on 14 February, 2023 thereby taking two innocent lives.

5. The concern of the petitioner is that the petitioner's premises are adjoining and/or in the vicinity of respondent no. 2's premises being divided by a compound wall. We are shown a aerial photograph showing the proximity respondent no. 2's building under construction and the petitioner's building. The petitioner's building is stated to be about 20 metres away from the site of respondent no. 2. The activity of crane as used by respondent no. 2, which is at a far greater height and in the open sky, is in such physical position, of adversely affecting and/or in a given situation of being dangerous to the residents of the petitioner's premises and/or persons who are visiting the petitioner's premises. The petitioner contends that once the operation of the crane takes place at such massive height, there are number of facets which are required to be taken into consideration in regard to the overall safety requirements, so that the incidents of such nature do not happen, by objects falling on persons who are on the ground, in the surrounding areas.

6. Mr. Seksaria, learned senior counsel for the petitioner has fairly stated that the intention of the petitioner, is not in any manner to cause an impediment to the construction of the respondent no. 2's project. He fairly states that the concern of the petitioner is in regard to the appropriate safety measures which are required to be adopted by respondent no. 2 in undertaking operations of the crane, which is in the interest of all the stakeholders and the safety of the people at large. It is in this context, Mr. Seksaria has drawn the

Court's attention to the substantive prayers as made in the petition. It will be appropriate to note the substantive prayers as made in the petition, which reads thus:

“(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ to command respondent no. 1, its officers to direct/compel the respondent no. 2 to undertake construction of the Project known as “Four Seasons Private Residences” on all that piece and parcel of land bearing Plot No. 00, C.T.S. No. 1H/136 admeasuring 4369 square meters, Division Lower Parel, Dr. E. Moses Road, Mumbai 400 018 to follow the safety norms/regulations contained in the Building permissions accorded by the respondent no. 1 as well under the prevalent development control regulation until the respondent no. 2 ensures total safety of the petitioner’s members from any harm/damage/injury of their lives/property and/or the plot and vicinity thereof to the satisfaction of this Hon’ble Court.

(b) That this Hon’ble Court be pleased to direct respondent no. 1 to restrain respondent no. 2, its agents, officers, servants, any person and/or entity claiming through or under it from constructing and/or continuing to construct the Project known as “Four Seasons Private Residences” on all that piece and parcel of land bearing Plot No. 00, C.T.S. No. 1H/136 admeasuring 4369 square meters, Division Lower Parel, Dr. E. Moses Road, Mumbai – 400 018 undertaken by the respondent no. 2 in disregard/violation of the safety norms/regulations contained in the Building permission accorded by the respondent no. 1 as well under the prevalent development control regulation until the respondent no. 2 ensures total safety of the petitioner’s members from any harm/damage/injury of their lives/property and/or the plot and vicinity thereof to the satisfaction of this Hon’ble Court.”

7. On the other hand. Mr. Andhyarujina, learned senior counsel for respondent no. 2, at the outset, would submit that the incident of 14 February, 2023 was an accident. He submits that such incident ought not to have happened and that, there can be no bigger sorrow and pain which respondent no. 2 has felt in the happening of such fateful incident. Mr. Andhyarujina would submit that the endeavour of respondent no. 2 is to take all precautions

and adhere to safety measures of all kind in undertaking the balance construction of the building in question. He has fairly stated that his clients are prepared to adopt all safety norms and strictly adhere to the rules and regulations in undertaking the construction, so that no nuisance thereof is caused to the residents of the petitioner's building or to the persons in the vicinity or to the third parties who are likely to get affected in the event any object falls from such high-rise construction being undertaken by respondent no. 2.

8. Mr. Walawalkar, learned senior counsel for the Municipal Corporation has also made brief submissions. He would agree to the fact that certainly these are specialized category of constructions and for which an independent thought in regard to the safety measures, in relation to the cranes being installed and its operation are required to be considered in the interest of safety of human lives and property, which need to be prescribed by the Municipal Corporation. He submits that the Municipal Corporation is certainly willing to look into all such issues which are immensely in public interest more so in regard to contemporary constructions.

9. Having heard learned counsel for the parties and having perused the materials as placed on record, at the outset, with quite a wrench we observe that the incident of 14 February, 2023, was too unfortunate to say the least. It can

never be countenanced that innocent lives are lost even by accidents of such nature caused by objects falling from a suspended crane located at an enormous height, which a person on the ground may ordinarily not notice, as the one installed at the site of respondent no. 2. We are deeply pained to note such incident, we hope that none of the high-rise constructions in the city of Mumbai should make people vulnerable and prone to such accidents, in which innocent people would get hurt or lose their lives. We firmly believe that a right of a person to move freely, in places which are not actual construction sites, if are threatened by a fear of being killed or hurt, this would certainly amount to violation of one's fundamental right to livelihood, guaranteed under Article 21 of the Constitution.

10. Be that as it may, getting wiser from the recent incident, there is a need to urgently think on measures and solutions for all times to come and not let such incidents happen in relation to constructions of such nature, either on the site of respondent no. 2 or anywhere else. We find that constructions of such nature being specialized, seem to be routinely undertaken by use of large cranes hanging/suspended in the air. It is high time that the Municipal Corporation gives special attention to the safety requirements in this regard. The use of cranes is a technique/tool being adopted in undertaking such construction. It is used for carrying materials to different levels of the high-rise construction like

lifting of large glass panels, cement blocks and strong concrete materials etc. It is common sight in the city of Mumbai that several high-rise buildings under construction have large suspended cranes.

11. The question, therefore, is whether there is any inspection, approval and certification of the operation of such cranes by any recognized specialized agency which may be appointed by the developers. As seen from the present case, it is not the developer who has any inhouse mechanism to install such cranes. Mr. Andhyarujina states that respondent no. 2 had appointed a contractor for such work, who in turn appointed a sub-contractor to operate the cranes. It appears that these are not the agencies which are strictly under any specific statutory control of the Planning Authority. As to whether these agencies are certified agencies is also another question to be looked into by the Planning Authority. As to what are the norms of safety and/or precautions, required to be implemented in undertaking such constructions, so that they do not affect those who are outside the construction site, i.e., in the adjoining land/premises or on the public road, in the vicinity is an important aspect which would be required to be taken into consideration.

12. There may be several other issues which may concern the norms of safety to be met and complied by such contractors/operators. We, however, leave all these issues to be considered by the Planning Authority in a manner

which it may deem fit and proper and as may be permissible in law. We are certain that the Municipal Commissioner would look into these issues so that appropriate directives/guidelines in this regard are issued to be made applicable to the ongoing constructions of such nature and that the constructions sites are monitored.

13. Insofar as the present proceedings are concerned, on the backdrop of what has happened earlier in the year 2020 as also the recent incident, learned counsel for the parties are agreeable that the following mechanism would create a sense of confidence and assurance on the safety measures to be followed in respondent no. 2 undertaking the balance construction, till the time use of the crane is no more required. The following arrangement shall operate till the use of the crane and/or such appropriate construction is complete:

(i) A committee comprising of Mr. Amol Shetgiri, and Mr. P.G. Redekar, Architects and Structural Engineers; a Senior Technical officer (to be nominated by the Municipal Commissioner) along with two representatives of the petitioner and two representatives of respondent no. 2, is constituted to formulate and implement safety norms in the interest of the petitioner and third parties, in respondent no. 2 undertaking the balance construction of its high-rise project, in using a large suspended crane.

(ii) The Municipal Commissioner shall nominate the concerned officer by 13 March, 2023.

(iii) The Committee shall have periodical meetings as may be mutually fixed. Each of the meetings shall be minuted, *inter alia* in regard to the activities in relation to the operation of the crane, all possible safety measures to be adopted, the timings of such

operation etc, to be implemented in the interest of all the stakeholders by respondent no. 2.

(iv) The Committee shall remain in operation till it is dissolved by mutual consent of the parties after the works are complete.

(v) In the meantime, within a period of two months from today, the Municipal Corporation shall look into issues *interalia* concerning safety measures in the operation and use of cranes in high rise constructions, including after having inputs of its representative being nominated by the Municipal Commissioner on the said Committee, so that appropriate directives/guidelines in a manner as permissible in law are issued, on all aspects in relation to installation, operation of cranes used in high-rise constructions.

14. We may clarify that all issues of expertise in relation to operations of the crane on the construction site of respondent no. 2, are left to be decided by the Committee being formed. Insofar as the framing of directives are concerned, it shall be within the exclusive domain of the Municipal Corporation, as the law may mandate. Our observations are only concerns expressed by us in the interest of safety of human life.

15. We are certain that in the event, the Municipal Corporation formulates any guidelines and intends to issue appropriate directives, the Urban Development Department of the State Government shall act upon any such proposal of the Municipal Corporation with utmost expediency. Considering

the urgency of the issue, we would expect the Secretary, Urban Development Department to pay special attention to such concern of the Corporation considering the larger public interest.

16. We disposed of the Writ Petition in the above terms. No costs.

17. Parties to act on the authenticated copy of this order.

(R.N. LADDHA, J.)

(G. S. KULKARNI, J.)