

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 5579 OF 2020

Riddhi Agrawal & Ors. ... Petitioners

Versus

State of Maharashtra Respondents

**ALONG WITH
WRIT PETITION (ST) NO. 5580 OF 2020**

Darshana Damle & Ors. ... Petitioners

Versus

State of Maharashtra Respondents

**ALONG WITH
WRIT PETITION (ST) NO. 5576 OF 2020**

Ashray Developers Ltd. ... Petitioner

Versus

State of Maharashtra Respondents

Mr. Naushad Engineer a/w Mr. Anand Pai i/by Deepak Sharma for the petitioners.

Mr. Sayad Sahil Nagamia for petitioner in WP No. 5580 of 2020.

Mr. Nilesh Gala i/by Law Square for Petitioner in WP No. 5576 of 2020.

Mr. P.G. Sawant, AGP for the respondent State.

Mr. A.S.Rao for respondent Corporation.

**CORAM : N.M. JAMDAR &
ABHAY AHUJA, JJ.
DATE : 22 JULY, 2020
(THROUGH VIDEO CONFERENCING)**

P.C.:

These three petitions involving identical facts and circumstances, by consent are taken up together and disposed of by a common order.

2. Petitions concern the Buildings A1 and A2 in Prasadam Gruhasankul, Phase 1 situated at Ambernath. By the impugned order dated 25 June, 2020, the Collector, Thane has requisitioned 84 flats from the building No. A1 and A2 for the purpose of isolation/quarantine centre in view of the COVID 19 pandemic. The buildings have been constructed by M/s. Sai Ashray Developers, the petitioner in WP (St) No. 5576 of 2020. The petitioners in Writ Petition No. 5579 of 2020 assert that they have purchased the flats in these buildings and also have been given possession letters. The petitioners in WP No. 5580 of 2020 assert their interest in the property stating that they are the land owners whereon the buildings have been situated.

3. The petitioners have challenged the action of the respondent Collector on various grounds, primarily on the ground that the Collector has solely proceeded on the

communication from the Municipal Council of Ambernath which does not disclose the correct facts.

3. The facts are these. The Municipal Council, Ambernath addressed a communication on 13 June, 2020 to M/s. Sai Ashray Developers seeking for its response regarding requisitioning the flats in the premises. Sai Ashray Developers on 17 June, 2020 informed the Municipal Council that the flats have been sold to third parties and possession letters have been issued and it is not possible to give possession of these flats. Thereafter the impugned order is passed by the Collector on 25 June, 2020. This order refers to a communication by the Municipal Council dated 23 June, 2020. The Collector, in the impugned order referred to the request of the Municipal Council to requisition the premises and proceeded to pass the order. There is no reference in the order as to the creation of third party rights in favour of individual flat owners.

4. Upon query to the learned AGP as to whether the Municipal Council of Ambernath had communicated to the Collector in the letter dated 23 June, 2020 that individual flat purchasers have been granted possession letter, the learned AGP submits that he has seen the copy of the communication dated 23 June, 2020 of the Municipal Council and it does not refer to any such factual

position.

5. It is clear therefore that when the Collector has passed the impugned order, he has not been made aware of the correct factual position. Therefore, the impugned order is based on wrong premises. What would be the consequences of creation of third party rights in the flats upon the requisition of the premises will have to be decided by the Collector when the order of requisition will be passed.

6. We are of the opinion that the impugned orders will have to be quashed and set aside and fresh decision will have to be taken by the Collector after taking note of the factual position which is brought on record by the petitioners which was not before the Collector. We are informed that certain steps have been taken by the respondent pursuant to the impugned order which at this stage we do not intend to disturb.

7. Accordingly we dispose of these petitions by quashing and setting aside the impugned order passed by the Collector, Thane on 25 June, 2020. The Collector will take decision considering the factual aspects which has been placed on record by the petitioners in the petitions. The copies of the petitions have already been served on the office of the Government Pleader and are available with the Collector.

8. For the period of two weeks within which the decision will be taken by the Collector, parties shall maintain status quo. The decision by the Collector will be taken as per law.
9. Writ petitions are disposed of in the above terms.
10. This order will be digitally signed by the Personal Assistant/Private Secretary of this Court. All concerned to act on production by fax or e-mail of a digitally signed copy of this order.

(ABHAY AHUJA, J.)

(N.M. JAMDAR, J.)