



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Number 253

(December 08, 2025)



AA Estates Pvt. Ltd. & Anr. vs. Kher Nagar Sukhsadan Co-op. Housing Society Ltd. & Ors.

SLP(C) No. 10758 of 2025

Date of Supreme Court Judgment: 28th November 2025

Facts of the Case: -

The present Civil Appeal arises from the judgment dated 11.09.2024 passed by the Bombay High Court in Writ Petition No. 3893 of 2024, by which the High Court directed the statutory authorities to grant requisite permissions to Kher Nagar Sukhsadan Co-operative Housing Society Ltd. (“the Society”) and its newly appointed developer, Respondent No. 8, for redevelopment of the Society’s building. The Corporate Debtor (“the Appellant-Developer/CD”), and its Resolution Professional have challenged this direction before this Court.

The Society had originally executed a Development Agreement (2005) and a subsequent Supplementary Development Agreement (2014) with the Appellant for the redevelopment of a plot, along with a dilapidated building, that it had obtained from the Maharashtra Housing & Area Development Authority (MHADA). Though certain approvals were obtained, the project did not progress because 41 members failed to vacate the premises and other disputes arose. In 2019, CIRP was initiated against Appellant No. 1 but was set aside. Subsequently, CIRP was again initiated against Appellant No. 1 at the instance of the State Bank of India, which was admitted by an order dated 12.06.2020.

Meanwhile, the Society issued notices alleging breach and subsequently terminated the Development Agreements with Appellant No. 1. A new developer (Respondent No. 8) was appointed in November 2021 to which MHADA granted permissions to proceed. It was alleged that despite the moratorium, the Society executed a fresh Development Agreement (10.12.2023) with the new developer, and redevelopment activities, including demolition, were commenced. On receiving objections from the Resolution Professional, MHADA revoked permissions due to the subsisting moratorium. Consequently, the Society approached the High Court seeking directions to authorities to grant redevelopment approvals.

By its impugned order, the High Court of Bombay, allowed the writ petition and directed the concerned authorities to issue permissions to Respondent No. 8. Aggrieved, the Appellants approached this Court contending, *inter alia*, violation of moratorium, extinguishment of valuable development rights, and improper exercise of writ jurisdiction in a matter governed by contractual remedies and the IBC framework.



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Supreme Court's Observations:

After examining the factual matrix, the Supreme Court first addressed the core issue of whether the High Court's directions facilitating redevelopment through the new developer violated the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). The Court noted that the CD's development agreements of 2005 and 2014 had already been terminated through resolutions of the Society in 2019, prior correspondence in 2021, and public notice of termination, all well before the second CIRP was initiated in December 2022. The Court held that once the agreements stood terminated, no subsisting or enforceable development rights survived in favour of the Corporate Debtor. Consequently, no "asset" existed which could fall within the protective ambit of the moratorium.

The Court further observed that Section 14(1)(d) protects only those properties that are in the actual occupation of the Corporate Debtor. The Supreme Court clarified that the CD never had physical possession of the land, nor did it enjoy any possessory rights akin to those recognised in the case of *Victory Iron Works Ltd. v. Jitendra Lohia and Another*. Thus, the moratorium could not be invoked to restrain the Society or the authorities from granting permissions to a fresh developer. The Supreme Court additionally emphasised that the High Court's directions were not in the nature of proceedings "against" the Corporate Debtor and, therefore, did not attract the statutory bar under Section 14(1)(a). Rather, those directions were issued to statutory authorities to process redevelopment proposals of the Society and its newly appointed developer entities who were independent of the Corporate Debtor and against whom the reliefs were actually sought. Since the Corporate Debtor's rights had already ceased to exist in law, the High Court's mandamus could neither prejudice nor alter the CIRP estate. Finally, the Court underscored that redevelopment of a dangerous, dilapidated building housing low-income families could not be indefinitely stalled on the basis of extinguished and non-existent contractual rights. The Corporate Debtor's prolonged non-performance, repeated delays, and failure to provide basic obligations such as transit rent reinforced that no equity or residual right survived in its favour. Accordingly, the appeal was dismissed.

Order/Judgement: The Supreme Court dismissed the appeal and ordered for the compliance of the directions of the High Court within two months from the date of the order.

Case Review: *Appeal dismissed.*