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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4902 OF 2014

Crescent Entertainment and Tourism Ltd.,
Mumbai.

Through it's Director,
Mr.Ishwarchand s/o Pratapchand Modi,
Age : 79 years, Occ : Service,
R/o 8, Ajanta Housing Society,
Khedi, Tq. & Dist.Jalgaon.

....PETITIONER

-VERSUS-

1 The State of Maharashtra.
Through it's Principal Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.

2 The District Magistrte,
Jalgaon, Dist.Jalgaon.

3 The Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

(Copy of Respondent Nos.1, 2 and 3
be served on Government Pleader,
High Court of Bombay,
Bench at Aurangabad).

....RESPONDENTS

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Mr.M.S.Deshmukh h/f Mr.S.S.Deshmukh, Advocate for the Petitioner.
Mr.VD.Hon, Senior Advocate, for Respondent No.1.
Mrs.Y.M.Kshirsagar, AGP, for Respondent Nos.2 and 3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and by the consent of the parties heard finally.

2 I have heard Shri M.S.Deshmukh, learned Advocate appearing on behalf of the Petitioner, Shri V.D.Hon, learned Senior Advocate appearing on behalf of Respondent No.1 and the learned AGP appearing on behalf of Respondent Nos.2 and 3.

3 At the very outset, Shri Deshmukh submits that this is a classic case of the Petitioner being made to “run from pillar to post” in the real sense of the term. The Director of the Petitioner is in his eighties. This is probably the fourth or fifth round of litigation in relation to the same project. Shri Deshmukh submits that the Petitioner is in agony to state that the State Authorities by their actions are practically creating obstacles in this project at every step and stage, virtually intending to tire out the Petitioner so as to compel him to give up the project.

4 Shri Deshmukh points out the judgment and order delivered by this Court on 04.02.2014 in Writ Petition No.3133/2012 filed by this very Petitioner against the same Respondents. After having extensively

considered the submissions of the litigating sides, this Court has issued the following directions in paragraphs 25 and 26:-

“25. *In the above backdrop, I do not intend to go into the contentious issues raised by the rival parties in view of the directions that I intend to issue in this order by keeping all contentions open.*

26. *As the undertaking has been filed, an amount of Rs.20,00,000/- having been deposited, NOC having been issued and the petitioner showing its willingness to file an application for license, if already not filed, ends of justice would be met by partly allowing this petition with the following directions:-*

(A) The petitioner shall file, if not already filed, applications before Respondent No.2 for seeking license for operating the four cinema screens within two weeks from today.

(B) Respondent No. 2 shall decide the said applications to be filed or pending before it within a period of forty five days, on its own merits and in accordance with law.

(C) While deciding said applications for issuance of licenses for four screens, Respondent No.2 shall also decide the apportionment of the amount of Rs. 20,00,000/- in accordance with the scheme of the Rules of 1966.

(D) In the event the applications of the petitioner are rejected by Respondent No.2, a decision as to whether the amount of Rs. 20,00,000/- would be retained or be refunded to the petitioner, shall also be taken by Respondent No.2.

(E) The petitioner, in the event of any adverse order passed by Respondent No. 2, shall be at liberty to challenge the said decision by raising all contentions including those set out in this petition. All contentions of the parties are therefore kept open while disposing off this petition.

(F) All parties shall note that this Court has not adjudicated upon the merits of this case and

Respondent No. 2 shall arrive at an independent decision without being influenced by this order or by the impugned orders dated 31.5.2012 and 13.8.2012. ”

5 Shri Deshmukh has thereafter, pointed out from the communication dated 27.03.2014 which is addressed to the Under Secretary, Home Department (Special), Government of Maharashtra by the District Magistrate, Jalgaon who is Respondent No.2 in this petition. He indicates from the second paragraph on the third page of the said communication that the District Magistrate has, on the basis of Rule 100(2) of the Maharashtra Cinemas (Regulation) Rules, 1966, informed the Under Secretary that the Occupancy Certificate is not required to be possessed by the Petitioner herein.

6 Shri Deshmukh then draws my attention to clause No.8 of the communication dated 19.05.2014 issued by the Under Secretary to the District Magistrate, Jalgaon imposing the condition of possessing the Occupancy Certificate in the light of the suggestion/ opinion of the Town Planning Department. The Petitioner is aggrieved by this condition No.8 which seeks to introduce the Occupancy Certificate as a pre-condition for operating the cinema screens despite the fact that such a condition is not a requirement under Rule 100(2) of the Rules of 1966.

7 The Petitioner, therefore, prays for setting aside of the condition No.8 imposed by the impugned order dated 19.05.2014.

8 Shri Hon, learned Senior Advocate, refers to the reply affidavit filed by the Joint Secretary, Home Department, Government of Maharashtra dated 22.07.2014. He points out paragraph 5 of the reply which reads as under:-

“5. *The Urban Development Department in its remarks informed the Home Department that though the applicant has raised the point of deemed permission as per rule 7.6, it is necessary that the concerned construction should be as per the building permission. However, as per the rule 100 of the Maharashtra Cinemas (Regulation) Rules 1966 for grant of cinema licence the copy of building permission and other documents are necessary which do not include occupancy certificate. Hence, for the grant of cinema licence, occupancy certificate is not necessary. However, it will be necessary to submit occupancy certificate before actual use of concerned place. The Urban Development Department furthermore informed that it would be appropriate to impose condition that 'the place cannot be used without occupancy certificate'.*”

9 Shri Hon frankly submits that for the grant of cinema licence under Rule 100 of the 1966 Rules, copy of the building permission and other documents, are necessary which do not include the Occupancy Certificate. Hence, for grant of cinema licence, the Occupancy Certificate

is not necessary.

10 Shri Deshmukh indicates that, notwithstanding the above, an application dated 30.09.2013 has been presented to Respondent No.2 herein for issuance of the Occupancy Certificate even prior to the imposition of the impugned direction clause No.8 dated 19.05.2014. He further submits that the said application was made under Section 263(1) of the Maharashtra Municipal Corporations Act, 1949. He, therefore, points at Section 263(2)(b) of the said Act to support his contention that the Petitioner is deemed to have been granted the Occupancy Certificate because the Competent Authority has not decided the said application and has failed to decide it within 21 days after the receipt of the notice of completion. He, therefore, submits that since there is no intimation of refusal to grant such permission, the Petitioner is deemed to have been granted the occupancy certificate.

11 Shri Hon submits that the Respondent Authorities have already crossed the stage of NOC and have reached the stage of cinema licence. The same is already granted. Similarly, the Respondent authorities have stated in paragraph 5 of the affidavit-in-reply that the occupancy certificate is not strictly necessary or required.

12 Considering the above, Section 263 of the Maharashtra Municipal Corporations Act, 1949 needs to be considered in the light of the submissions of Shri Deshmukh. Section 263 reads as under:-

“263. Completion certificates permission to occupy or use:-

- (1) Every person shall, within one month after the completion of the erection of a building or the execution of any such work as is described in section 254, deliver or send or cause to be delivered or sent to the Commissioner at his office, notice in writing of such completion, accompanied by a certificate in the form prescribed in the bye-laws signed and subscribed in the manner so prescribed, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work and shall apply for permission to occupy the building.*
- (2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until –
(a) permission has been received from the Commissioner in this behalf, or
(b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.”*

13 It is, therefore, apparent that the application dated 30.09.2013 by which the Petitioner presented the completion certificate for issuance of the occupancy certificate, should have been decided on or before 21.10.2013. It is not the case of the Respondent/ State either that an order has been passed by the Competent Authority within the said 21 days under Section 263 of the said Act or the Authority has refused the

occupancy certificate to the Petitioner.

14 As such, in the light of the opinion expressed by Respondent No.2/ District Magistrate in his communication dated 27.03.2014 read with the statement of the Joint Secretary, Government of Maharashtra in paragraph 5 of the affidavit in reply, the Petitioner is deemed to have been granted the Occupancy Certificate under Section 263(2)(b) of the said Act. Considering the deeming fiction, naturally the effect of deemed occupancy certificate will have to be given from 22.10.2013. Consequentially, condition No.8 imposed upon the Petitioner by the impugned communication dated 19.05.2014 stands fulfilled.

15 The last grievance of the Petitioner in this petition is that the direction given by this Court in Clauses (C) and (D) below paragraph 26 of the judgment dated 04.02.2014 reproduced above, has not been complied with by the Respondents.

16 Shri Hon submits that the said directions in Clauses (C) and (D) can be complied with and decided after hearing the Petitioner within a period of 90 days.

17 Shri Deshmukh submits that on a specific date the Petitioner

can appear before Respondent No.2/ District Magistrate, Jalgaon and address him orally as well as submit his written notes of arguments pursuant to which the concerned Authority can decide the issue as per the directions of this Court.

18 As such, the Petitioner shall appear before Respondent No.2 on 20.07.2015 at 11:00 AM. The Petitioner shall thereafter, abide by the dates of hearing as may be posted by Respondent No.2.

19 Needless to state, Respondent No.2 shall decide the issue in the light of the directions in clauses (C) and (D) of paragraph 26 of the judgment dated 04.02.2014 in Writ Petition No.3133/2012 as expeditiously as possible and preferably within a period of SIXTY DAYS from today after hearing the litigating sides.

20 With the above observations and directions, this Writ Petition is partly allowed. Rule is made partly absolute in the above terms.

21 Learned AGP to communicate this order to Respondent No.2 forthwith.

(RAVINDRA V. GHUGE, J.)