IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2288 OF 2014

M/s.Colour Tech Coating (I) Pvt. Ltd. .. Petitioner.
Vs.
Maharashtra Industrial Development Corporation & Others .. Respondents.

Mr.Roshan Savant and Ms.Geeta Sonawane i/b Mr.Jamshed Ansari for the Petitioner.
Mr.G.S. Hegde a/w Ms.Vaibhavi Gole i/b A.R. Bhole & Co. for the Respondent No.1.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 4TH FEBRUARY, 2015

P.C.

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the first respondent.

2. This petition relates to plot No.A-2 (for short "the said plot") in the Industrial Estate of the first respondent (The Maharashtra Industrial Development Corporation) at Dombivli (E) Taluka Kalyan, District Thane. The first respondent granted lease in respect of the said plot to M/s. Ramniklal Raoji and Co. Pvt. Ltd. on 7th December, 1973. There was a *tri parte* agreement on 25th March, 1992 under which lease was transferred to M/s.Fluid Air (I) Pvt. Ltd.

3. M/s.Fluid Air (I) Pvt. Ltd. had taken loan from the third respondent Bank of Baroda and as a security of payment of loan, the

said plot was mortgage by M/s.Fluid Air with the third respondent.

4. As M/s.Fluid Air committed default, the third respondent made an application before the Debt Recovery Tribunal (for short “DRT”). A recovery certificate was issued by the DRT. The said plot was put to auction in execution of the said recovery certificate. The petitioner's bid was accepted and on 13th April, 2010, the sale was confirmed. After the sale certificate was issued and registered on 4th December, 2010, the petitioner was placed in possession of the said plot.

5. The dispute is about the demand of differential premium made by the first respondent to the petitioner as a condition for transfer of the said plot in the name of the petitioner. On 20th March, 2013, the first respondent addressed a letter to the recovery officer of DRT. The first respondent agreed to transfer the said plot to the petitioner subject to condition of paying a sum of Rs.42,29,900/- towards 30% differential premium for the transfer. There are other conditions imposed in the said letter. The challenge in this writ petition under Article 226 of the Constitution of India is to the demand made by the said letter dated 20th March, 2013. There is also a challenge to the communication dated 30th December, 2013, issued by the first respondent to the petitioner. By the said letter, the demand of Rs.42,29,900/- was reiterated.

6. The learned counsel appearing for the petitioner invited our attention to the letter dated 30th December, 2013 which is the subject matter of challenge. He submitted that the said letter itself refers to the circular dated 12th December, 2011, which is issued by way of explanation to the circular dated 12th May, 1998. He submitted that though the circular dated 12th December, 2011 records that the same will apply to the applications for the transfer received after 12th August, 2011, the first respondent itself is relying upon the said circular. It is clear that if the said circular is made applicable, only the standard transfer charges will be payable by the petitioner Without prejudice to the said contentions, he submitted that even if circular dated 12th May, 1998, is applicable, the transfer in favour of the petitioner is an involuntary transfer under the orders of the Recovery Officer in execution of the recovery certificate issued by the DRT. Therefore, only transfer charges will be payable. Lastly, he relied upon the order dated 27th September, 2012 (Exhibit-ZC to the petition). He reiterated that in a similar case, the transfer has been permitted only subject to payment of standard transfer charges and without payment of differential premium.

7. Learned counsel appearing for the first respondent relied upon the policy reflected from the circular dated 12th May, 1998. He urged that clause 2 under the caption of "Non-formal transfer" will apply in the present case and therefore, there is no error in the demand.

8. We have given careful consideration to the submissions. It will be necessary to make a reference to the circular dated 12th May, 1998 issued by the first respondent. The circular incorporates transfer guidelines for the industrial and other plots. The said guidelines have been issued in super-session of all earlier guidelines. The said circular divides the transfers into two categories, formal transfers and non-formal transfers. The learned counsel appearing for the petitioner relied upon clause 3 of the first part dealing with formal transfers. Clause 3 reads thus :

> "3. All involuntary transfers including amalgamation, demergers etc. under the direction of the Competent Court/Tribunals/ appropriate Government not being this nature of permission and shall be permitted on recovery of the transfer charges."

The said clause 3 applies to involuntary transfers including amalgamation, demergers etc. under the direction of the appropriate Court. In the present case, the said plot was put to auction and the petitioner has voluntarily opted to participate in bid. Therefore, clause 3 will not apply to the said transfer. In the present case, the transfer cannot be said to be an involuntary transfer. Therefore, the case of the petitioner will not fall in the category of formal transfers. As far as the category of non-formal transfers is concerned, the relevant clause reads thus :

> "<u>Non-Formal Transfers</u>

> Any other transfer which do not cover under the formal transfers referred to above will be treated as a NON FORMAL transfer and the same will be permitted subject to the recovery of the differential premium as mentioned below :-
>
> 1. Where the Licensee/Lessee has constructed or consumed at-least 10% of the permissible FSI of the plot area, such transfer will be permitted on recovery of the 10% of the differential premium.
>
> 2. Where the condition at (1) above is not fulfilled i.e. has not constructed at least 10% of the permissible FSI of the plot area such transfer will be permitted on recovery of the 30% of the differential premium."

It is not the case of the pettioner that the original lessee had constructed or consumed atleast 10% of the permissible FSI of the area of the said plot. Therefore, second clause will apply under which 30% differential premium is payable.

9. We must also make a reference to the annexure to the circular dated 12th May, 1998, being Annexure-I which incorporates the resolution passed by the first respondent. The circular is in terms of the said resolution.

10. Now we come to the circular dated 12th December, 2011. It is true that the said circular is issued by way of clarification to the circular dated 12th May, 1998. However, the said circular clearly records that the same will apply only to the applications for transfer

received after 12th August, 2011. In the present case, admittedly the application made by the petitioner was prior to the said date. It is true that in the letter dated 30th December 2013, there is a reference to the circular dated 12th November, 2011. However, it is merely stated therein that the said circular is by way of clarification. As stated earlier, the said clarification will apply prospectively and it cannot not be applied to the applications which were pending.

11. Therefore, we find that the demand for payment of 30% differential premium is strictly in terms of the policy reflected from the circular dated 12th May, 1998. Even assuming that in a similar case, such differential premium was not demanded, it will not create any right in favour of the petitioner as the first respondent is under an obligation to uniformly follow the binding policy. We must also note here that in the present case, the mortgage was created by the Lessee of the first respondent without the consent of the first respondent and in the case on which the petitioner is trying to rely upon, it appears that a consent was granted by the first respondent to enable the lessee to mortgage the plot in question.

12 Therefore, we find no error in the demand made by the first respondent for payment of 30% differential premium as a condition for transfer. The petition is accordingly rejected.

(A.K. MENON, J.) **(A.S. OKA, J.)**