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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2297 OF 2013

Gorai Indira Co-op
Housing Society Ltd. ...Petitioner
vs.
Municipal Corporation for
Greater Mumbai & Ors. ...Respondents

Mr.Nikhil Rajshirke and P.V.Kothare for the
Petitioner
Ms Geeta Joglekar for the respondent No.1
Ms M. Kanjale, AGP for the respondent No.2
Mr.Rajiv Mane, AGP for the respondent No.4

CORAM : A.S.OKA, &
C.V.BHADANG,JJ.
DATE : JANUARY 28, 2016

P.C.:

1 The learned counsel for the petitioner states that service of notice to the respondent No.3 is completed by substituted service. Registry to verify the same and submit a report.

2 It appears from the petition that the petitioner had appointed the respondent No.3 as a Contractor/Developer for developing its property. The petitioner has terminated the said agreement. The grievance made in this petition is that the Municipal Corporation is not considering the applications made by the petitioner for grant of further permissions. There is a reply filed by Shri Prakash Vichare, Assistant Engineer (Building Proposal) R Ward. In paragraph 7, the said Officer

has relied upon the letter dated 30th August 2003 issued by the Senior Inspector of Economic Offence Wing, Crime Branch instructing the Mumbai Municipal Corporation not to grant further permission till investigation is over. The said letter was challenged by the petitioner by filing Criminal W.P.No.1087 of 2009. The said petition was disposed of by this Court by order dated 29th June 2009 by observing that the directions contained in the said letter were operative only till the completion of investigation. The said order also records that on completion of investigation, even a charge sheet has been filed. Therefore, the letter dated 30th August 2003 issued by the Senior Inspector of EOW has no legal effect as of today. In paragraph 10 of the affidavit of Shri Prakash Vichare, it is contended that unless the petitioner settles the dispute in respect of the redevelopment of the property, it is not possible to consider the case of the petitioner. The said stand is completely erroneous. Paragraph 10 itself records that the petitioner has terminated the agreement with the respondent No.3-Tirupati Development Corporation.

3 If the Mumbai Municipal Corporation is satisfied that the petitioner is the owner or is otherwise entitled to develop the property subject matter of this petition, unless there is a restraint order of any Competent Court which prevents the petitioner from developing the property, the Mumbai Municipal Corporation cannot refuse to consider the proposals submitted by the petitioner. The Mumbai

Municipal Corporation has no concern with the dispute, if any, between the petitioner and the respondent No.3.

4 Hence, the petition need not be kept pending and the same is disposed of by passing the following order:

- (I) If there is no restraint order passed by any Competent Authority/Court which prevents the petitioner from developing the property subject matter of this petition, the Mumbai Municipal Corporation shall consider the proposal submitted by the petitioner for grant of development/building permission in accordance with law;
- (II) We make it clear that the proposals could not be rejected or kept pending on the ground that there is a dispute between the petitioner and the respondent No.3-M/s.Tirupati Development Corporation;
- (III) Writ Petition is disposed of on above terms;
- (IV) Chamber Order No.794 of 2013 does not survive and the same is disposed of.

(C.V.BHADANG,J.)

(A.S.OKA,J.)