

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3117 OF 2014

Sumer Buildcorp Pvt Ltd and Another ..Petitionerss

Vs.

State of Maharashtra and Others ..Respondents

Mr. Prasad Dani, Senior Counsel a/w Ms. Sucheta Joshi-Dongre i/b
Mr. Pankaj Thatte, for the Petitionerss.

Mr. Rajiv Mane, AGP, for Respondent No.1- State.

Mr. P. G. Lad a/w Ms. Aparna Murlidharan, for Respondent Nos. 2
to 5.

CORAM :-S.C. DHARMADHIKARI &
B.P.COLABAWALLA,JJ.

DATE :- SEPTEMBER 22, 2016.

P. C.:

The Writ Petition seeks a direction to call for the records relating to the letter dated 17th October, 2013-Annexure-A and to scrutinize the same for its legality and validity where-after this Court should quash and set aside the demand of the Mumbai Building Repairs and Reconstruction Board to hand over 342.71 square meters being the alleged shortfall in the surplus area to be handed over by the Petitioners-Developer to the Board.

2 The Petitioners after setting out the description of the property and laying the foundation for their title thereof claim that they are in receipt of a No Objection Certificate for redevelopment of the plot of land more particularly described in the Petition and a representation at page 83. That plot is at Mazgaon, Mumbai. With regard to this No Objection Certificate, the Petitioners have raised certain issues and have contended that on the strength of a Circular dated 17th October, 2013, the Board cannot demand an area by alleging that it is a shortfall of the surplus area to be handed over to the Board.

3 It is stated that the Petitioners would be in a position to demonstrate if they are allowed to appear before the Chief Officer of the Mumbai Building Repairs and Reconstruction Board that there is no shortfall or deficit. The entire surplus area in terms of the conditions imposed for redevelopment has been handed over.

4 There are other claims as well which the Petitioners apprehend would give rise to some coercive measures.

5 The only contention of Mr. Dani, the learned senior counsel appearing for the Petitioners is that the board is raising a

demand but prior to the demand as above, the Petitioners' version has never been considered. Even if the demand has to be given a formal shape and particularly of confirmation or crystallization, then, that requires a prior opportunity of being heard to the Petitioners. The board is a unit of the Maharashtra Housing and Area Development Authority. It may be empowered to demand what is styled as a surplus area but its computation and calculation is something which the parties would be able to establish only if they are given an opportunity as above.

6 It is only on such a contention of Mr. Dani that we enquired from Mr. Lad, appearing for the Respondents and particularly the contesting Respondent as to whether any such opportunity can still be extended so that the Petitioners are in a position to satisfy the authorities and particularly Respondent No.4 that there being no shortfall neither any coercive measures nor any proceedings much less criminal in nature be instituted or initiated. Mr. Lad states that it has no objection to granting the above opportunity.

7 As a result of the above discussion, we find that the Petitioners' request as made and limited as it is, is reasonable. The

Petitioners shall appear before Respondent No.4 and who shall treat all the representations annexed as Annexures to the Writ Petition and report of the Architect including the grounds in the Writ Petition as a version of the Petitioners with regard to the computation and calculation of the surplus area to be handed over, he shall then arrive at a decision as to whether the demand of 342.71 square meters is justified. If that is justified, then, the reasons for the same and the calculation and computation of the surplus area be indicated with sufficient clarity.

8 Let the above exercise be completed within a period of eight weeks from the date the Petitioners appear before Respondent No.4. It is agreed by the parties that they shall appear before him on 14th October, 2016. The time of eight weeks starts and commences from that date till the Chief Officer determines the issue. For a period of four weeks thereafter, the ad-interim order passed by this Court shall continue to be operative. No equities can be claimed by the Petitioners on the strength of the same. However, all contentions of both sides in relation to the above controversy are kept open. The Writ Petition is disposed off.

9 Mr. Dani, on instructions, states that there need not be

any apprehension on the part of the Respondents particularly Respondent No.4 if the demand is confirmed by the Chief Officer. The Petitioners would subject to their legal rights and contentions make available area of 342.71 square meters in the form of constructed tenements available to the Board either from the very project or from some adjoining projects but in the same ward. We do not say anything on this offer and it is entirely for the Board to consider it.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)