

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2505 OF 2014

M/s. Midas Constructions : Petitioner.
Versus
The Maharashtra Housing Development and anr. : Respondents.

Mr. Nitin P Dalvi for the Petitioner.
Mr. P G Lad and Mrs. Sayli Apte for the Respondent No.1.
Mrs. Shital Mane for the Respondent No.2 – BMC.

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**
DATE : 31st JULY 2017

P.C.

1 The Petitioner No.2 is the society to whom the building in question has been conveyed and the land appurtenant to the said building has been leased out in terms of the Development Control Regulations, Greater Mumbai. The plot of land is one whose boundaries are mentioned in the schedule to the lease which has been executed in favour of the Petitioner No.2 society on 21/07/2006.

2 The Petitioner No.1 is the developer who has been engaged to redevelop the property by the Petitioner No.2 Society. The Petitioners claim an area of 936.19 sq.meters as the area of plot which has been leased to the Petitioner No.2 Society vide the said lease dated 21/07/2006. However, on site it is found that the area of the plot is 663.37 sq.meters and therefore, there

is a shortfall of 272.82 sq.meters. The Petitioners have therefore filed the instant Writ Petition for a direction to the Respondent Nos.1 and 2 to forthwith survey, measure and demarcate the said plot land admeasuring 936.19 sq.meters as per the said lease deed dated 21/07/2006. The Petitioners have further sought a direction to issue NOC and IOD for development of the plot taking into consideration the agreed area of 936.19 sq.meters to which the Petitioners are entitled to.

3 On behalf of the Respondent No.1 an affidavit has been filed by one Bharat Haribhau Jankoli – Executive Engineer, Kurla Division. In the said affidavit in paragraph 6 it has been mentioned that the boundaries mentioned in the plan annexed to the lease deed as well as the actual demarcated plan which is produced as Exhibit-II are tallying. It is further stated that the area mentioned in the lease deed dated 21/07/2006 is not the correct area. In paragraph 7 of the said affidavit, same is reiterated and it is stated that after demarcation as per Exhibit-II the land admeasuring 936.19 sq.meters is not available on site.

4 The Petitioners in seeking the said reliefs which have been adverted to herein above are thereby seeking enforcement of the terms of the lease deed dated 21/07/2006 especailly having regard to the fact that it is the case of the Respondent Nos. 1 and 2 that the said area of 936.19 sq.meters is

not available on site. Exhibit-I to the said affidavit is the copy of the lay out and Exhibit-II is the site plan of the building of the Petitioners. Since serious disputed questions of fact arise on account of the said claim made by the Petitioners, it is not possible for this Court in its writ jurisdiction to grant any reliefs. The above Writ Petition is accordingly dismissed. However, it would be open for the Petitioners to file appropriate proceedings before the appropriate forum for assertion of their rights which they have claimed in the above Writ Petition. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with law.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]