IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.618 OF 2018

Spark Developers ...Petitioner

vs

Municipal Corporation of Greater Mumbai
Through The Commissioner And 2 Ors. ...Respondents

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Mr. Sanjiv A. Sawant, i/b. Himanshu Kode, for the Petitioner.

Mr. Rajiv Mane, AGP, for State /Respondent Nos. 2 and 3.

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CORAM : S.C. GUPTE, J.

DATED : 27 MARCH, 2018

P.C. :

. Heard learned Counsel for the parties. Rule. Made returnable forthwith and heard by consent of Counsel.

2. This petition challenges the orders passed by Collector of Stamps. By the impugned orders dated 12 January 2018 and 6 February 2018, the Collector has ordered to pay stamp duty and penalty on a document, which is termed as a tripartite agreement, between the Municipal Corporation of Greater Mumbai ("Corporation") and Shree Munjoba Co-Operative Housing Society Ltd. and M/s. Spark Developers, respectively, the "society" and the "developer" as referred to in the tripartite agreement.

3. M/s. Spark Developers, the Petitioner herein, is developing a

municipal property, namely, Plots bearing C.S. Nos. 882 and 883 of Bhuleshwar Division at Shamaldas Gandhi Marg, Princess Street, Mumbai, also known as BIT Building No.144, under DCR 33(7). The Improvement Committee and the Corporation have, by their respective resolutions, accorded sanction for the redevelopment proposal. As per this tripartite agreement, the Municipal Corporation has agreed to create a lease in respect of the property in favour of the proposed Co-operative Housing Society. Some of the terms of the lease, including the period of lease and the rent, etc., are provided in this tripartite agreement. This tripartite agreement is treated by the Collector of Stamps as an agreement giving power to a promoter or developer for construction or development or sale or transfer of any immovable property and the duty leviable on a conveyance under clause (b) or (c), as the case may be, of Article 25, is levied on the document. It is explained in an affidavit filed by the Municipal Corporation in Writ Petition No.289 of 2017 and also a letter addressed by Additional Municipal Commissioner that the tripartite agreement is merely an MOU of a transitory nature. Under this MOU, the ownership of the entire plot continues to remain with the Municipal Corporation. It is submitted that as and when a lease is created in respect of the property, appropriate stamp duty shall be paid. It is submitted that, under the relevant Chapter of the Manual of the Estate Department of the Municipal Corporation, it is only after a building is completed as per the sanctioned plan that the Estate Department is requested to prepare a draft of final lease deed. After the draft is prepared, a resolution is passed first by the Improvement Committee of the Corporation and then by the Corporation in the house under Section 92 of the Municipal Corporation Act. Thereafter, a document of lease is

executed and registered. It is only at that stage that stamp duty will be payable on lease or agreement of lease, as provided in Article 36 of the Schedule to the Maharashtra Stamp Act.

4. None of these aspects has been considered by the Collector of Stamps in the impugned order. It is pertinent to note that the development of the property is under 33(7) of DCRs. This provision is for development or reconstruction undertaken by the Municipal Corporation of Greater Mumbai either departmentally or through any suitable agency. If the Municipal Corporation develops or reconstructs the property through a suitable agency and executes an agreement with such agency and the occupants of the property, it cannot be termed as a development agreement within the meaning of Article 5(g-a) of the Schedule to the Stamp Act. As much as direct development by the Corporation itself through its own department, even a development through an agency is development by the Corporation itself. It cannot termed as development by the agency.

5. The impugned order, in the premises, cannot be sustained. Rule is, accordingly, made absolute and the impugned orders of the Collector of Stamps dated 12 January 2018 and 6 February 2018 are quashed and set aside. The tripartite agreement is, accordingly, correctly stamped for Rs.100 under clause (i) (b) of Article 5(h) of the Schedule to the Maharashtra Stamp Act. All interim orders, which were confirmed by the impugned order, are also quashed and set aside as stated in prayer clause (b). The petition is disposed of.

(S.C. GUPTE, J.)