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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1428 OF 2017

Avis Motors Private Limited & Anr. ...Petitioners
vs.
Municipal Corporation of
Greater Mumbai & Others ...Respondents

Mr.Karl Tamboly i/b Mr.T.N.Tripathi & Co. for the
Petitioners
Ms Vandana Mahadik for the respondent Nos.1 to 3.
Mr.Sukanta Karmakar, AGP for the respondent No.4
Mr.Prakash S. Patil, Assistant Engineer (Building
and Proposal) L/N Ward

CORAM : A.S.OKA, &
P.N.DESHMUKH,JJ.
DATE : JANUARY 31, 2018

P.C.:

1 On 11th January 2018, the parties were put to notice that the petition will be disposed of finally at the stage of admission.

2 The petitioner made an application dated 15th October 2016 to the Executive Engineer of the Building Proposal Department of the Mumbai Municipal Corporation. Relevant portion of the said application reads thus:

"Sub :Continuation of Architect Till A-Wing OC

File No.CE/3846/BPES/AL

Respected Sir,

I am the owner of land CTS 636 located at building known as A-Wing heights safeed pool Saki Naka.

I had applied for OC for the A-Wing and for which duly letter and plans were submitted at your office. I wish to seek your help in retaining my architect M/s.Arvind Singh Consultants only for the A-Wing till procedure of OC is granted.

I seek your kind cooperation."

3 By the impugned communication dated 14th December 2016, not only that the request made by the application dated 15th October 2016 was not granted, but the Assistant Engineer (Building Proposal) stated thus:

"With reference to your application dated 15/10/2016 for retaining your architect for procuring A-wing Occupation Certificate, we have to state that this office has already informed you vide letters dated 22/8/2016 and 7/9/2016 to surrender the original copies of CC for re-endorsement of C.C for wing-B for compliance of court orders.

The said letters were issued to you after obtaining serious of legal opinions in

context to consent terms dated 23/2/2015 before DRT III and while disposing of securitization application No.53 of 2015 under clause 37 of the said consent terms.

Now, you are hereby requested to produce/submit us necessary orders from the court/tribunal if any so as to process the request made by you on merits."

4 Firstly, no reasons have been assigned in the impugned communication for not granting the request made in the application dated 15th October 2016. Secondly, it is very difficult to understand the last part of the impugned communication by which the petitioner was requested to produce an order of the Court or Tribunal. Even reliance placed on the consent terms filed before the Debt Recovery Tribunal is completely misplaced.

5 Faced with these difficulties, the learned counsel for the Mumbai Municipal Corporation on instructions of Shri Prakash Patil, Assistant Engineer (Building Proposal), L/N Ward, states that the Officer will pass a fresh order on the application dated 15th October 2016. we accept the said statement.

6 As regards other substantive prayer, it is not the case of the petitioner that any attempt was made by the petitioner through his Architect to submit an application through online mode. It is always open

for the petitioner do so that in accordance with law. Therefore, it is not necessary to consider the said prayer.

7 Accordingly, we dispose of the petition by passing the following order:

(I) Impugned communication dated 14th December 2016 is hereby quashed and set aside;

(II) We direct the appropriate Officer of the Mumbai Municipal Corporation to decide the application dated 15th October 2016 in accordance with law in the light of the observations made in this order. Appropriate order shall be passed within a period of one month from the date on which this order is uploaded;

(III) Writ petition is allowed on above terms.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)