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

WRIT PETITION NO. 1516 OF 2016

**MIG (Bandra) Realtors and Builders Pvt. ...Petitioner
Ltd.**
Versus
**Municipal Corporation of Gr. Mumbai & ...Respondents
Anr.**

Mr. Virendra Tulzapurkar, Senior Counsel with Mr. Nikhil Sakhardande and Mr. Gaurav Gopal and Ms. Divyanka Kapoor i/b Wadia Ghandy & Co. for the Petitioner.
Ms. Vandana Mahadik for the Respondent – BMC.
Mr. S. Gaikwad, i/b Vishwajit Parshuram Sawant, Respondent No.2.

**CORAM: A.S. OKA &
 RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 23RD APRIL, 2018

JUDGMENT PRONOUNCED ON 5TH JUNE, 2018

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner by the present Petition is seeking the quashing and setting aside of Condition No.10 in I.O.D. issued by the Respondent – Corporation. The condition No.10 reads thus:

“That the Registered Agreement with the existing tenant along with the list will not be submitted before C.C.”

2. The Petitioner has also sought directions against Respondent – Corporation for issuance of commencement certificate for commencement of redevelopment on the land without insisting on performance of Condition No.10 of the IOD. Notice has been issued for final hearing and disposal of the Petition at the admission stage.

3. The Petitioner is a developer of immovable property in Mumbai. The Petitioner has acquired redevelopment rights in respect of land admeasuring approximately 20149.40 sq. mtrs. bearing survey No. 341 (part) having corresponding CTS Nos. 649 (Part) 649/1 (part) to 48 (part) of village Bandra, Gandhi Nagar in the registration Sub-District of Bandra, Mumbai Suburban District at Bandra (East), Mumbai – 400 051 (for short “the said land”) from the Middle Income Group CHS Ltd. - Group I (for short “the said Society”). The Petitioner is carrying out redevelopment of the said land under Regulation 33 (5) of the Development Control Regulations for Greater Mumbai, 1991 (for short, “DCR”). The said land is owned by Respondent No.2. The Respondent No.2 constructed 19 buildings on the said land, consisting of total 176 flats and sold existing flats constructed thereon under the “Middle Income Group Housing Scheme” and allotted the flats in the said existing buildings to allottees on hire purchase basis. The allottees

thereafter became members of the said society. Respondent No.2 leased the said land to the said society by way of Residential Land Lease Deed. Respondent No.2 by Deed of Sale executed with the said Society simultaneously with the Residential Land Lease Deed conveyed, granted and assured to the said society, the said existing buildings to have and hold the said buildings as the owner for residential use. The Deed of Sale was registered with the office of Sub-Registrar of Assurance at Bombay at Bandra. The said society was also granted Deed of Supplementary Lease executed between Respondent No.2 and the said society registered with the Sub-Registrar of Assurances, Bombay at Bandra ("Additional Plot Lease Deed") whereby the society was granted an additional plot of land designated as 'Recreation Ground' bearing Survey No. 341 (part) corresponding tot CS No. 649, 649/1 to 649/48 admesuring 4,242.08 Sq. mtrs. situated at Gandhi Nagar, Bandra (East), Mumbai – 400 051 in Municipal 'H' Ward East.

4. The said society resolved to redevelop the said land by demolition of existing buildings and construction of new buildings, by utilizing and exploiting its development potential and for better common amenities and facilities. The said society executed a Development Agreement dated 31st October, 2010 in favour of the Petitioner which is duly registered, granting redevelopment rights

in respect of the said land to the Petitioner. The Petitioner has taken upon itself to redevelop the said land under the agreement and redevelopment is under Regulation 33 (5) of the DCR. Subsequently, a Deed of Modification dated 23rd August, 2014 was executed for modification of certain terms of the said Development Agreement. The said Deed of Modification has also been registered. Respondent No.2 had thereafter issued a no objection certificate on 16th November, 2011 for utilization of 39768.30 sq. mtrs. of built up area on the said lands. On 23rd September, 2013, an Intimation of Disapproval (for short "the said IOD") was issued by the Respondent No.1 to the Petitioner which states "that the Registered Agreement with the existing tenant along with the list will not be submitted before the CC" in clause 10 of the said IOD.

5. The said society has by letter dated 21st September, 2015 addressed to the Petitioner stated that all 176 members have vacated their respective premises and have handed over keys of their respective premises to the said society and the said society in turn has handed over the said premises together with the keys to the Petitioner. The Petitioner accordingly submitted a representation dated 8th March, 2016 to Respondent No.1 for waiver of the impugned Condition No.10 of the IOD, in view of

there being 100% consent of the members as evidenced by the members vacating the flats and it is subsequent demolition. However, Respondent No.1 by its letter dated 10th March, 2016 refused to accept the representation of the Petitioner and called upon the Petitioner to comply with the impugned Condition No.10 of the IOD. The Petitioner has therefore, filed this Petition challenging the demand of Respondent No.1 for compliance of Condition No.10 of the IOD.

6. This Court by an order dated 15th April, 2016 which is corrected by order dated 20th April, 2016 directed the Corporation to proceed with application for commencement certificate without insisting on compliance with clause 10 of the IOD. By a further order dated 20th June, 2017, this Court had made it clear that the grant of commencement certificate on the basis of the previous order of this Court will be subject to further orders passed in this Petition. Therefore, prayer clause (b) which directs Respondent No.1 to issue commencement certificate for commencement of redevelopment on the said land without insisting on Condition No.10 of the IOD, although having been granted, will be subject to the orders passed herein.

7. The learned senior counsel appearing for the Petitioner has submitted that Respondent No.1 has no power to impose Condition No.10 of the IOD on the Petitioner as redevelopment is governed by regulation 33(5) of the DCR which does not contemplate any such condition being imposed. He submitted that imposing such condition in the IOD is itself arbitrary apart from being without the authority of law. He has submitted that the said society has already issued allotment letters to each of its members and that in view of the registration of the said Development Agreement, Deed of Modification and issuance of allotment letters by the said society duly confirmed by the Petitioner, the said Condition No.10 in the said IOD cannot be insisted upon for grant of commencement certificate. He has further submitted that the provisions contained in regulation 33 (5) of the DCR require consent of only 70% of the members and despite that, 100% of the members of the said society have granted their consent to the redevelopment of the said land under the said Deeds. He has submitted that it is clear from the clauses in the Development Agreement read with the Deed of Modification that the members of the said Society have been secured.

8. He has submitted that the members of the said Society are already owners of the said flats and no conversion of tenancy

rights to ownership rights will take place upon completion of the redevelopment. He has, therefore, submitted that this Condition No.10 in the said IOD has been imposed by the Respondent No.1 by displaying non-application of mind as the said members will get new flats in the new structures in lieu of the existing flats owned by them and hence there is no requirement of such registered agreement being entered into with existing tenants. He has thus submitted that the Condition No.10 in the said IOD is required to be quashed and set aside as it is illegal, invalid, arbitrary and in violation of Constitution of India. He has relied upon an additional Affidavit filed on behalf of the Petitioner wherein certain documents obtained under Right to Information Act, 2005 have been referred to and it is stated that the apparent reason for imposition of the said condition appears to be an erroneous interpretation by Respondent No.1 of order dated 23rd June, 2014 passed by this Court in Writ Petition (L) No. 1135 of 2014. The said order relates to privately owned buildings being demolished by Respondent No.1 in exercise of power under Section 354 of the MMC Act, 1888 and it is in that context that Respondent No.1 while granting sanction of redevelopment imposes a condition in the IOD that no commencement certificate will be issued under Section 45 of the MRTP Act, 1966 unless and until an agreement

either providing permanent alternate accommodation in the newly constructed building or settlement is arrived at by and between the tenants and / or occupiers and the landlord in respect of the demolished premises. He has stated that the present case is not covered by the order dated 23rd June, 2014. The documents obtained under the Right to Information Act, 2005 pertain to a similar project of redevelopment as in the present case and includes letters exchanged between Respondent No.2 and Respondent No.1 and a Report of compliance of IOD dated 16th January, 2016. Respondent No.2 has clarified in its response to Respondent No.1 as reflected in the letters exchanged that it does not insist on submitting separate agreements with each of the occupants prior to grant of its NOC. The Report also states that compliance of conditions of IOD has been received in respect of the project and that Condition No.10 is not applicable as per the Ease of Doing Business. It is apparent from these documents that Respondent No.2 only verifies whether 70% consent of the occupiers has been obtained. He has accordingly submitted that Respondent No.1 cannot impose such Condition No.10 in the IOD for issuance of commencement certificate for commencement of redevelopment on the said land.

9. The learned counsel appearing for Respondent No.1 and learned counsel appearing for Respondent No.2 contest this Petition. The learned counsel for Respondent No.1 has placed reliance upon an Affidavit of Shri Shivanand S. Mendigeri of the Respondent No.1 – Corporation filed on 5th April, 2016. She has stated that clause 10 of the IOD has been incorporated to protect occupancy rights of the occupants and to avoid litigation in the future. It is only after compliance of the said condition in clause 10 of the IOD that the Petitioners application for the commencement certificate can be processed on merits. She states that the IOD having been issued prior to the Implementation of the policy Ease of Doing Business, the said condition meets such purpose.

10. We have considered the submissions. We find that regulation 33(5) of the DCR does not impose Condition No.10 viz. Execute registered agreement between the developers and the existing tenants / occupiers before issuance of the commencement certificate. We find that Clause 10 of the IOD which imposes such condition has been issued by Respondent No.1 without considering Regulation 33(5) of the DCR under which the redevelopment of the said land is being undertaken. Respondent No.1 also failed to consider that 100% of the members of the said society have granted consent to the

redevelopment and have vacated their respective premises which have been handed over to the Petitioner. We find that the Development Agreement and Deed of Modification executed between the said society and the Petitioner and which are duly registered, have been acted upon and that the imposition of such condition by way of clause 10 of the IOD is not in the interest of the occupants / members of the said society who will be getting new flats in the new structures which are being redeveloped in lieu of the existing flats owned by them under the "Middle Income Group Housing Society". We find that the members of the said Society are secured and this is apparent from the Clauses in the Development Agreement read with the Deed of Modification. The important clauses read as under:-

(i) "in consideration of the grant of redevelopment rights, the Developer will provide, inter-alia, (a) Rehabilitation Premises together admeasuring 2,51,040 square feet carpet area together with Amenities and Common Areas to the members of the Society (in the manner as provided therein), (b) upgrade of Members in their respective premises by way of purchase of additional carpet area by concerned Member (as provided therein); (c) the Society Car Parking Spaces and the Visitor Car Parking to the Society (as described therein); (d) Hardship Compensation to the Members in the manner provided therein (as described therein); and (d) Corpus amount to the Society as stated therein";

ii) "the Developer has also agreed to handover 450 parking spaces located in the Project to the Existing Members ("Members Parking Spaces") and 112 car parking spaces shall be handed over the Developer to

the Society for its visitors and guests ("Visitors Parking Spaces") and 1270 car parking spaces shall be allotted by the Developer to the purchasers of premises in the Project ("Developers Parking Spaces"). The excess parking spaces over and above the aforesaid 1832 car parking spaces being the Members Parking Spaces, Visitors Parking Spaces and the Developers Parking Spaces shall be shared between the Developer and the Society in the ratio of their respective parking spaces;"

11. We observe that Respondent No.2 – MHADA has not insisted on imposition of such condition as reflected in the documents obtained by the Petitioner under the Right to Information Act, 2005 and relied upon by the Petitioner in respect of similar projects of redevelopment of buildings under Regulation 33(5) of the DCR. It has been stated in the Report of compliance of IOD dated 16th January, 2016 that Condition No.10 of the IOD in respect of the said project is not applicable as per Ease of Doing Business. The Respondent No.2 also has not insisted upon submission of separate agreements with each of the occupants and is concerned only whether consent of 70% or more of the occupants have been obtained for the redevelopment project prior to grant of its NOC. We find that Respondent No.1 by imposing such a condition has acted in an arbitrary manner apart from the condition being illegal. The redevelopment process which will benefit the middle income group under the "Middle Income Group Housing Scheme" will be adversely affected and will severely

impact the members of the said society and their families. We find that the redevelopment of the said land which is beneficial to the Middle Income Group would be stalled if such condition is imposed. We find that the members of the said societies have vacated their existing premises and which have been handed over to the Petitioner by the said society. We also find that 100% of the members of the said society have granted consent to the redevelopment of the said land. The redevelopment process has accordingly commenced. We are therefore, of the view that Condition No.10 of the said IOD cannot be a condition to grant of commencement certificate and is required to be quashed and set aside. Accordingly, rule is made absolute in terms of prayers (a) and (b) of the Petition. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)