

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

WRIT PETITION NO.466 OF 2017

Gold Plaza Developers Private
Limited and Anr. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

**WITH
CHAMBER SUMMONS (LODGING) NO.481 OF 2017
IN
WRIT PETITION NO.466 OF 2017**

Shree Kutchi Lohana Niwas Graha
Mitra Mandal ...Applicant

In the matter between

Gold Plaza Developers Private
Limited and Anr. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

.....

Mr. P.S. Dani, senior counsel with Mr. Kiran Jain and Ms Neeta Solanki
i/b. M/s. Kiran Jain and Co. for the Petitioners.

Ms Jyoti Chavan, AGP for the Respondent Nos.1 and 2-State.

Mr. R.V. Pai with Mr. Aloukik R. Pai, Mr. Akshay Pai and Ms Apurva Bhat
i/b. Ms Nevty N. Thakkar for the Applicant in CHSWL/481/2017.

**CORAM : S.C. DHARMADHIKARI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 25th APRIL, 2018.

P.C.:-

Mr. Dani, the learned senior counsel tenders affidavit-in-rejoinder to the affidavit-in-reply filed by the Respondent Nos.1 and 2-

State, which is taken on record.

2. By this petition under Article 226 of the Constitution of India, the Petitioners pray for issuance of writ of certiorari or any other appropriate writ order or direction to call for the records in relation to what is styled as report but according to the Petitioners a final order dated 4th August, 2016 and after a scrutiny as to its legality and validity, this Court should quash and set aside the same.

3. There are various prayers based on which reliefs have sought but we are not concerned with the same and at this stage we are of the opinion that this writ petition can be disposed of only after noting some of the factual aspects.

4. The Petitioners claim right, title and interest in certain immovable property portions of which the State Government says belonged to the Government. In other words, it is a public property that has been allegedly dealt with and which act is prohibited by law as also by the terms and conditions of the lease. In other words, that would require the State Government's prior approval or permission which having not been obtained this transaction does not bind the

State Government. Since the lease has expired by efflux of time without obtaining the renewal thereof such a transaction has been entered into and such act of the concerned persons is a fraud allegedly perpetrated on the public. In relation to this controversy there are several documents, to which our attention has invited. They are annexures to the writ petition. It is stated that though initially what is forwarded to the Government by the Collector, is a report, copy of which is at page 386 and 387 to the Petition, according to the Petitioner the Collector of the Mumbai city concludes that there is violation of the provisions and particularly of the terms and conditions of the lease. The property could not have been dealt with in this manner. Aggrieved and dissatisfied with this communication of the year 2013 an appeal was preferred before the Maharashtra Revenue Tribunal. The Revenue Tribunal came to the conclusion that this is merely a report or an internal communication between the Collector and the Government and based on that the Appellate jurisdiction of the Tribunal could not have been invoked. In other words, the Maharashtra Revenue Tribunal concludes by its order 29th January, 2013 that this communication cannot be termed as appealable order.

5. Later on the matter was again examined by the Collector,

Mumbai and the Collector has forwarded his report, which is from page 396 to page 400 of the paper book. The Collector concludes that before the sub division original survey No.126 is admeasuring 8651.51 sq. yards but out of it 4775 sq. yards (3992.47 sq. mt) is a Government land and under lease. In relation to that he forwarded his report. Our attention is also invited to page 460 CC, which is an endorsement of the above by the Additional Commissioner, Konkan Division. However, both felt that the matter should be finally resolved at the level of the State Government.

6. However, this petition was filed on the footing that the impugned communication is a binding order though it is styled as a report.

7. The argument is that Exhibit FF page 533 of the paper book dated 4th August, 2016 may be a communication between the Collector, Mumbai City and the Principal Secretary (Revenue) Revenue and Forest Division, Government of Maharashtra but in it certain binding and final conclusions have been reached. In that regard our attention is invited to page 539 and 544 of the paper book.

8. However, during the course of arguments Mr. Dani, the learned senior counsel appearing for the Petitioners very fairly invited our attention to the affidavit-in-reply filed on behalf of the Respondent Nos.1 and 2 and submits that though certain factual conclusions have been reached allegedly faulting the concerned person of violation of the terms and conditions of the lease, tantamounting to a fraud yet in paragraphs 24 and 25 this is what is stated:-

“24. I say that the Collector has after hearing all concerned yet again submitted its report dated 4th August, 2016 to the State Government to pass appropriate orders. I say that by this Petition, the Petitioner is challenging the said Report dated 4th August, 2016, I most respectfully submit that the above Petition is premature and the inquiry report dated 4th August, 2016 cannot be challenged as the final order is yet to be passed by the State Government. I say that the said Report dated 4.8.2016, is Report prepared by the Collector after hearing all concerned parties and final Order is yet to be passed by the State Government and therefore the no cause of action has accrued to the Petitioner and therefore the Petition is liable to be dismissed with cost.

25. I say that in so far as the claim of the Petitioner, that the Petitioner is entitled for the benefits under Government Resolution dated 12.12.2012, the same cannot be granted to the Petitioner as the Petitioner is neither the lessee nor a party who has entered into the property with the consent of the State Government and further the lease has expired long back and the Petitioner being a stranger cannot insist that the said Government Resolution dated 12.12.2012 be made applicable to the Petitioner. Apart from the same the Lessee i.e. the Trust has committed serious breaches of

the terms and conditions of the Lease and therefore the Petitioner cannot claim the benefits of the Government Resolution dated 12.12.2012.”

9. With the assistance of Mr. Dani and Mr. Pai, we have perused these two paragraphs and we enquired from Ms Chavan, learned AGP appearing on behalf of the Respondent Nos.1 and 2 whether the State Government has taken a final decision or is yet to reach it. She on instructions, submits that the State Government has not taken a final decision as yet and such a decision would be reached only after hearing the Petitioners and other affected parties.

10. Once such a statement is made on instructions, which is accepted, as an undertaking to this Court, we do not wish to entertain this petition. There is nothing which presently binds either the State Government or the Petitioner. The Collector and Additional Commissioner, Revenue Division have forwarded their reports. The contents of which would be taken into consideration by the State Government but before relying upon them they would have to hear the Petitioners and all another affected parties represented by Mr. Pai or otherwise.

11. We clarify that once the State Government will pass a final order only after hearing all the affected parties then presently no opinion should be expressed by us on the merits of the controversy. It is entirely for the State Government to take a final decision. That decision should be taken in accordance with law. In the event that decision is adverse to the Petitioners' interest it is open for the Petitioners then to move appropriate proceedings and challenge that decision of the State Government. All contentions, which are raised in the petition can then be urged before the appropriate forum in appropriate proceedings.

12. The Writ Petition stands disposed of.

13. The Chamber Summons also stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.) (S.C. DHARMADHIKARI, J.)