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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 646/2018**

**LODHA PRANIK LANDMARK DEVELOPERS
PRIVATE LIMITED**

..... Petitioner

Through: Mr Abhinav Vashisth, Senior
Advocate with Mr Rahul Dwarkadas,
Mr Rishi Agrawala, Ms Prachi
Dhanani, Mr Samudra Sarangi, Ms
Niyati Kohli and Mr Anirudh Bhat,
Advocates.

versus

AIRPORT AUTHORITY OF INDIA & ANR Respondents

Through: Ms Chetna Rai and Mr Pulkit Tyagi,
Advocates for AAI/R-1.
Mr Dev P. Bhardwaj, CGSC with Mr
Satya Prakash Singh, Advocate for R-
2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.01.2018

CM Nos. 2812/2018 and 2813/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 646/2018 and CM No. 2811/2018

3. At the outset, the learned counsel appearing for respondents has submitted that the petitioner has filed the petition seeking similar reliefs before the Bombay High Court - Writ Petition (C) 2420/2017 - which was withdrawn by the petitioner on 17.11.2017. A copy of the said petition has

also been handed over by the learned counsel for the respondents.

4. He states that although similar issues were sought to be agitated before the Bombay High Court, the fact that the said petition had been preferred and withdrawn has been concealed in the present petition.

5. Mr Vashishth, the learned senior counsel appearing for the petitioner states that “the petition filed in the Bombay High Court had nothing to do with the issues involved in this petition”. He states that the questions involved in this petition are somewhat different. The petition before the Bombay High Court related to non-grant of occupancy certificate in relation to Towers C and D - which were otherwise as per the sanctioned height - because certain excess construction had been carried out in Towers A and B. He states that, thereafter, the occupancy certificates in respect of Towers A and B were also granted up to 160 meters and, therefore, the said petition was withdrawn.

6. This is stoutly contested by the learned counsel for the respondents.

7. The petitioner’s main grievance in the present petition relates to non-grant of No Objection Certificate (NOC) for additional height in respect of Towers A and B, which are part of the real estate project being constructed by the petitioner in Goregaon, Mumbai. The said project consists of four towers referred to as Towers A, B, C & D. Initially, a NOC had been granted by Airport Authority of India (respondent no.1 - hereafter ‘AAI’) for construction of the said towers at a height of 148.77 metres Above Mean Sea Level (hereafter ‘AMSL’). The petitioner has been pursuing with the AAI and other authorities for clearance to raise the height of the buildings in

question.

8. It is stated that the petitioner was granted clearance to raise the height of Tower D to 168.94 AMSL, which would be further increased to 171.11 metres. Since the petitioner had been granted the clearance for the increased height only in respect of Tower D, the petitioner had been pursuing with the authorities for granting similar permission in respect of other towers as well.

9. It is claimed that on 23.04.2015 the petitioner applied for Aeronautical Studies to be conducted for Towers A, B and C requesting that the petitioner be permitted to construct Towers A & B upto height of 172 metres AMSL and construct Tower C upto a height of 175 metres AMSL. On 17.11.2015, the AAI granted permission to the petitioner to raise Tower C up to a height of 169.9 metres AMSL. However, no such clearance was granted in respect of Towers A and B and this is the petitioner's principal grievance.

10. It is the petitioner's case that Towers C and D (for which clearance for additional height has been granted) are closer to the airport than Towers A and B and, therefore, based on the Aeronautical Studies conducted earlier, clearance for additional height ought to be granted for those Towers as well. The petitioner states that since the AAI had insisted that separate Aeronautical Studies be carried out in respect of Towers A and B, the petitioner had also applied for Aeronautical Studies to be conducted.

11. It is seen that the writ petition filed by the petitioner before the Bombay High Court (captioned ***Lodha Pranik Landmark Developers Private Limited vs State of Maharashtra and Ors. : W.P. (C) 2420/2017***)

also raised certain issues, which are similar to the ones sought to be urged in this petition as well. In the petition before the Bombay High Court, the Union of India and the AAI were arrayed as respondent nos. 3 & 4 respectively. The “points to be urged” as articulated by the petitioner in that petition read as under:-

- “1. Respondent No.2 Corporation has declined to issue OCs for Towers C and D of the Project, notwithstanding that the same have been constructed in accordance with the heights sanctioned by Respondent Nos. 4 and 2 and that there is no illegality or irregularity whatsoever with regard to the same.
2. Respondent No. 3 and 4 should be directed to forthwith consider the Petitioner’s Application for sanctioning height for construction of Towers A & B in the Project upto 169.9 meters Above Mean Sea Level (“AMSL”) on the basis of Aeronautical Study undertaken in respect of Towers C & D.
3. Respondent No.2 Corporation is wrongly seeking to link the grant of OC in respect of Towers C & D to the approval of height being passed by Respondent No. 4 for Towers A & B upto 169.9 meters AMSL.
4. No danger could be caused due to the grant of additional height to Towers A & B, as they lie in between Towers C & D for which the higher height has already been granted. ”

12. It is apparent from the above that the question of granting further height clearance for Towers A and B was very much a part of the subject matter of the said petition. Most of the averments made in the said petition are also similar to the pleadings in the present petition. The prayers made in the writ petition filed before the Bombay High Court read as under:-

- “a. This Hon’ble Court will be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of Constitution of India directing Respondent No.2 Corporation to forthwith (i) to recall the Impugned Memorandum; and (ii) to consider the Application of the Petitioner for issuance of the Occupation Certificates in respect of Towers “C” and “D” forming part of the Project constructed on the Project Lands without in any manner linking the same to the height approval in respect of Towers “A” and “B” upto 169.9 meters AMSL to be granted by Respondent No. 4 for Towers “A” and “B”.
- b. That this Hon’ble Court will be pleased to issue Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of Constitution of India directing Respondent Nos.3 and 4 to forthwith consider the said application of the Petitioner for approval of height in respect of Towers “A” and “B” on the Project Lands upto 169.9 meters AMSL on the basis of Aeronautical Study conducted by Respondent No. 4 in respect of Towers “C” and “D”.
- c. That pending the hearing and final disposal of this Writ Petition, (i) the operation and implementation of the Impugned Memorandum (Exhibit-A hereto) be stayed; (ii) Respondent No. 2 Corporation be directed to forthwith consider the Application for grant of Occupation Certificates in respect of Towers “C” and “D” and
- d. Ad-interim/interim reliefs in terms of prayer clause (c) herinabove be granted;
- e. Costs of the Petition be provided for.”

14. It is apparent from the plain reading of the said prayers that prayer (b) also relates to grant of additional height clearance for Towers A and B.

15. The prayers made by the petitioner in the present petition are set out below:-

- “(a) That this Hon’ble Court be pleased to issue a writ of *Mandamus* or a writ in the nature of *Mandamus* or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent No. 1 to conduct the aeronautical study of Towers ‘A’ and ‘B’ of the Project in furtherance of the decision of the Ld. Appellate Committee in its meeting held on 24th June 2015 having resolved to conduct the aeronautical study, the Aeronautical Study Application dated 18th October, 2016 and reminder vide letter dated 22nd December, 2017 made by the Petitioner requesting Respondent No. 1 to conduct the Aeronautical Study of Towers ‘A’ and ‘B’ of the Project;
- (b) That pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to restrain the Respondents, their servants, agents and officers from, in any manner, taking any action and/or coercive steps and/or directing any third party to take any action/coercive steps against the Petitioner, its servants, agents, assigns, employees, representatives and officers qua the Project Lands;
- (c) for ad-interim relies in terms of prayer clause (b) above;
- (d) for costs of this Petition.”

13. The petitioner also pleaded that the Aeronautical Studies already conducted earlier should have been applied for considering the petitioner’s case for Towers A and B as well. It is seen from the pleading filed before the Bombay High Court that the similar averment was also made in that case.

14. In view of the above contention that the Petition before the Bombay High Court had nothing to do with the petition in this Court, is plainly

incorrect.

15. This Court is also persuaded to accept the respondent's contention that the petitioner is indulging in forum shopping and this is not a case of accidental omission but wilful concealment as it has been the consistent stand of the AAI in other cases that the appropriate Court for seeking relief in respect of buildings being constructed in Bombay would be the Bombay High Court.

16. The petition is, accordingly, dismissed with costs quantified at ₹50,000/-.

17. This would not preclude the petitioner from approaching the Bombay High Court after making due disclosure of the earlier petitions.

VIBHU BAKHRU, J

JANUARY 23, 2018
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