

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPLICATION NO. 332 OF 2019
IN
WRIT PEETITION NO.6714 OF 2016**

M/s.Darshan Skyhigh Constructions and Anr. ..Applicants.
V/s.
The State of Maharashtra Through The Principal
Secretary, Revenue and Forest Dept. and Ors. ..Respondents.

Mr. Mayur Khandeparkar a/w. Prerna Lalchandani and Yadunath
Chaudhari for the applicants.

Smt.M.S.Bane, AGP for State/Respondent Nos.1 and 2.

Mr.Santosh Parad for respondent Nos.3 and 4.

CORAM: A.S. GADKARI, J.

DATE : 5th July, 2019.

P.C.:-

The applicants are the original petitioners. By the present application, the applicants have prayed that, leave may be granted to them to commence construction activities on the subject land pending the petition.

2 Heard the learned counsel for the applicants, learned

counsel for Mumbai Municipal Corporation and the learned AGP. Perused the record.

3 By the abovementioned petition, the petitioners have challenged the order dated 2nd April, 2016 passed by the Respondent no.1, directing Respondent no.2 to investigate extent of violations of the covenants, provisos and conditions of lease-deed and also for directions to transfer Lease of the land in the name of petitioner no.1 without charging any premium /unearned income and to renew the same in favour of the petitioner no.1 as per the lease-deed.

4 By an Order dated 26th October, 2016, this Court has granted 'Rule' and ad-interim relief in terms of prayer clause (c) of petition. The statement of the learned counsel for the petitioner recorded in paragraph 4 on page 3 of the said order has been subsequently modified by an Order dated 17th November, 2016. After effecting correction as per Order dated 17th November, 2016, second last line of paragraph 4 on page 3 of order dated 26th October, 2016 reads as under:-

“ He submits that the petitioner will file an undertaking by 17.11.2016, with copy to other

side, stating that they will not commence the actual construction activities on the suit land without obtaining NOC from the Collector and/or leave of this court.”

The present application seeking leave thereof is filed in pursuance of the said statement made by the petitioners as noted herein-above.

5 The record further indicates that, after ad-interim relief was granted in favour of the petitioners on 26th October, 2016, respondent no. 2 i.e. the Collector of Mumbai has raised a demand of approximately of Rs.3,86,91,589/- (Rupees three crore eighty six lakhs ninety one thousand five hundred and eighty nine) by its letter dated 23rd January, 2018 towards transfer charges/unearned income and annual lease rent.

6 The learned counsel for the petitioners submitted that the petitioners are disputing the levy of such charges by respondent no.2 and will make their submissions at the time of final hearing of the petition.

The learned counsel for the applicants further submitted

that the suit buildings are in dilapidated condition and requires immediate demolition to avoid any untowards incident which may cause life of human beings in danger. He further submitted that the petitioners are in the process of making arrangements for alternate accommodation of the tenants of the suit buildings.

7 During the course of hearing of the application, with a view to protect the interest of the State and to have equity in the matter, this Court suggested the petitioners to reserve certain premises/flats in the proposed building for keeping lien of respondent nos. 1 and 2 on it during the pendency of the petition. It was made clear that if the petitioners succeed in the petition the said lien will be lifted and the petitioners will be permitted to sale the premises on which lien is kept. It is further made clear that, in case the petitioners could not establish their case and could not succeed in the petition, in that event, the petitioners will have to either pay the amount claimed by respondent nos. 1 or 2 or the premises on which lien has been kept will be appropriated to the Government Exchequer.

8 The learned counsel for the applicants, on instructions, agreed for the said suggestion and in furtherance thereof tendered across the bar an undertaking duly affirmed by Mr. Dilip C. Jain and Mr. Harshadrai P. Jain, the partners of petitioner no.1-Firm. In the said undertaking, the petitioners have given list of five flats on which lien of Respondent nos. 1 and 2 be kept. As per Ready Reckoner, the value of the said premises is approximately of Rs.4,25,11,184/- (Rupees four crores twenty five lakhs eleven thousand one hundred and eighty four) only. The list of flats is mentioned in the schedule at page 3 of the said undertaking. The undertaking by the partners of petitioner is accepted and the same is taken on record and marked 'X' for identification.

9 In view of undertaking given by the petitioners, the application is allowed in terms of prayer clause (b).

(A.S. GADKARI, J.)