

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

NOTICE OF MOTION NO. 103 OF 2019
IN
WRIT PETITION [LD.] NO. 212 OF 2019

Raghuleela Builders Pvt. Ltd.	..Applicant.
<i><u>In the matter between</u></i>	
Raghuleela Builders Pvt. Ltd.	..Petitioner.
<i><u>Versus</u></i>	
The Mumbai Metropolitan Region Development Authority and Another.	..Respondents.

Mr. Vikram Nankani, Senior Advocate with Mr. Vibhav Krishna, Ahtesham Khatri, Shanmugham, Mayuresh Borkar, Tushar Pande, Devang Lakhotia I/b Juris Consillis for the Petitioner.

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Amogh Singh, Nivit Shrivastava, Sneha Patil I/b Maniar Shrivastava Associats for the Respondent.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.
Date : **March 27, 2019.**

P. C. :

1. Heard Mr. Nankani, learned senior counsel for the Petitioner/Applicant and Mr. Dhakephalkar, the learned senior counsel for the Respondents.
2. On 20th February 2019, after hearing both sides at length, we passed speaking order whereunder we admitted the writ petition and by way of interim relief following directions are given :

- "[1] The Respondents are directed to provide within 10 days a computation of following :*
- [A] (i) the total amount paid towards the lease premium as per the acknowledgements signed by the Respondents.*
(ii) balance amount to be paid by the Petitioner towards the lease premium.
- [B] (i) the total amount paid towards the simple interest as per the acknowledgements signed by the Respondents.*
(ii) balance amount to be paid by the Petitioner towards the simple interest as per the lease deed.
- [C] (i) the total amount paid towards the penal interest as per the acknowledgements / receipts signed by the Respondents.*
(ii) balance amount to be paid by the Petitioner towards the penal interest as per the RBI prime lending rate (Base rate) on 1st July of each year without charging penal interest on interest.
(iii) additional amount if penal interest is also charged on unpaid interest.
- [2] The Petitioners are directed to deposit within three months thereafter the entire balance amount so communicated by the Respondents towards the lease premium (Clause [1][A] (ii)), simple interest (Clause [1][B](ii)) and penal interest (Clause [1][C](ii)). This deposit however would be subject to final outcome of the petition.*
- [3] The Petitioner is directed to furnish an undertaking to bind to deposit the additional amount that may be computed by the Respondents under para (Clause [1][C](iii)), i.e., penal interest is charged on the unpaid interest. This undertaking would be subject to the final outcome of this writ petition.*
- [4] The Respondents are directed to issue NoC for assignment of the balance area immediately without insisting for any payment.*
- [5] The Respondents are further directed to process the OC of proportionate area, corresponding to the above payment within a week from the receipt of payment of the above said amount computed by them and upon submission of undertaking as above."*

3. The present notice of motion is filed by the Petitioner, making grievance that calculation made by Respondent No.1 is contrary to the interim order passed by this Court and therefore he has approached this Court for the following reliefs :

- "1. That, this Hon'ble Court may please forthwith permit the Petitioner to assign the balance area under the Supplementary Lease Deed and for this purpose direct the Respondents to forthwith grant unconditional NOC;
2. That, this Hon'ble Court may please direct the Respondents to accept total deposit of Rs.539.46 crores under the Supplementary Lease dated 29.10.2013 computed in terms of the Order dated 20.02.2019 (at Exh-1 supra), which shall be paid by the Petitioner within three months of such direction;
3. That, this Hon'ble Court may please accept the undertaking of the Petitioner binding itself to pay the balance amount of Rs.44,822 crores, and further liability if any, subject to final outcome of the instant petition as well as pending WP 586 of 2018;
4. That, this Hon'ble Court may please direct the Respondents to issue OC of proportionate area, corresponding to the payment, within a week from the receipt of payment of the above said amount."

4. Respondent No. 1 and 2 in terms of the interim order mentioned above has given following calculation :

Hon. High Courts Order dt. 20/02/2019	As per prevailing practice of MMRDA
	By charging Penal Interest as per PLR of SBI (as per Authority Resolution)

	(Rs. In Cr. As on 25.02.2019)
In the light of above, we pass following interim order : [1] the Respondents are directed to provide within 10 days a computation of following :	
[A](i) the total amount paid towards the lease premium as per the acknowledgements signed by the Respondents.	703.07
(ii) balance amount to be paid by the Petitioner towards the lease premium.	618.29
[B] (i) the total amount paid towards the simple interest as per the acknowledgements signed by the Respondents.	106.09
(ii) balance amount to be paid by the Petitioner towards the simple interest as per the lease deed.	0.00
[C](i) the total amount paid towards the penal interest as per the acknowledgements / receipts signed by the Respondents.	0.00
(ii) balance amount to be paid by the Petitioner towards the penal interest as per the RBI prime lending rate (Base rate) on 1 st July of each year without charging penal interest on interest.	164.31
(iii) additional amount if penal interest is also charged on unpaid interest.	--
[2] The Petitioners are directed to deposit within three months thereafter the entire balance amount so communicated by the Respondents towards the lease premium (Clause [1][A](ii)), simple interest (Clause [1][B] (ii)) and penal interest (Clause [1][C](ii)). This deposit however would be subject to final outcome of the petition.	782.60 (618.29 +164.31 =782.60) (Rs. Seven Hundred Eighty Two crores and Sixty Lakhs only)

5. Yesterday, we heard the learned counsel for the respective parties. We noted that the calculation submitted by the Respondents is incorrect. Mr. Dhakephalkar, learned senior counsel, however, requested to keep the matter today. He submitted that he

would seat with his officers and will give correct calculations.

6. When the matter was called out today for orders, Mr. Dhakephalkar, learned senior counsel for the Respondents having taken instructions from his clients, placed on record the fresh calculations of the amount to be paid by the Petitioner in terms of the interim order. The same is taken on record. For ready reference the said calculation is reproduced hereinbelow :

Hon. High Courts Order dt. 20/02/2019	Rs. in Cr.
[A](i) the total amount paid towards the lease premium as per the acknowledgements signed by the Respondents.	703.07
(ii) balance amount to be paid by the Petitioner towards the lease premium.	281.83
[B] (i) the total amount paid towards the simple interest as per the acknowledgements signed by the Respondents.	106.09
(ii) balance amount to be paid by the Petitioner towards the simple interest as per the lease deed.	90.89
[C](i) the total amount paid towards the penal interest as per the acknowledgements / receipts signed by the Respondents.	0
(ii) balance amount to be paid by the Petitioner towards the penal interest as per the RBI prime lending rate (Base rate) on 1 st July of each year without charging penal interest on interest.	168.44
[2] The Petitioners are directed to deposit within three months thereafter the entire balance amount so communicated by the Respondents towards the lease premium (Clause [1][A](ii)), simple interest (Clause [1][B](ii)) and penal interest (Clause [1][C](ii)). This deposit however would be subject to final outcome of the petition.	541.16 (281.83 +90.89 +168.44 = 541.16)
[3] The Petitioner is directed to furnish an undertaking to bind to deposit the additional amount that may be computed by the Respondents under para (Clause [1][C](iii)), i.e., penal	To be provided later.

interest is charged on the unpaid interest. This undertaking would be subject to the final outcome of this writ petition.	
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7. According to the Petitioner, the total amount which the Petitioner is liable to pay under the interim order is Rs.539.46 crore and according to the Respondents, as per the corrected calculation, this amount comes to Rs.541.16 crore. The learned senior counsel for the Petitioner having taken instructions from his client submitted that the Petitioner has no objection to pay this amount of Rs.541.16 crore in accordance with the interim order referred to above.

8. Learned senior counsel for the Petitioner submitted that this amount would be paid to the Respondents by the Petitioner within the period of three months from today. Statement accepted as an undertaking to this Court.

9. In the light of above, we direct the Respondents to issue NoC in favour of the Petitioner for assignment of the balance area immediately without insisting for any payment as per Clause [4] of the interim order referred to above. We also direct the Respondents to issue OC of the proportionate area, in terms of clause [5] of the interim order within the period of one week from the date of receipt

of above amount of Rs.541.16 crores.

10. The learned senior counsel for the Petitioner at this stage invited our attention to clauses (v) and (vii) of the letter dated 13th March 2019 issued by Respondent No.2. We have gone through the said clauses. Clause (v) virtually suggests that order passed by the High Court is incorrect one. This is nothing short of contempt of Court.

11. That apart, despite the interim order referred to above, Respondent No. 2 in clause (vii) ha stated as follows :

"..... Public Accounts Committee of Maharashtra State Legislature in its meeting held on 27/12/2018 and 14/02/2019 has raised the objection in respect of the pending premium to be recovered from the development on plot under reference. Accordingly, Urban Development Department on 01/01/2019 has directed MMRDA not to issue any CC or OC for the building on plot under reference till the outstanding amount is recovered. Further, UDD on 20/02/2019 has directed MMRDA to put up a strong stand in the Hon. High Court regarding the recovery of outstanding amount. In view of above, MMRDA shall not issue any further CC/OC on plot under reference till outstanding amount is recovered."

12. Whatever may be the apprehensions of the Respondents, we make it clear that it obligatory for them to comply with the orders of this Court or else they can be held guilty for disobedience of the orders passed by this Court. Since the

Respondents have now correctly calculated the amount payable under the interim order and have shown the willingness to issue OC after deposit of the amount by the Petitioner, we are not inclined to proceed further against them by initiating action under the Contempt of Courts Act.

13. We also accept undertaking of the Petitioner in prayer clause (3) of the notice of motion and make it clear that payment of the amount and issuance of OC for proportionate area would be subject to the final outcome of the writ petition.

14. Notice of motion stands disposed of.

15. Time to carry out amendments in terms of the earlier order is extended by two weeks from today.

16. All concerned to act on an authenticated copy of this order.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]