

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

**WRIT PETITION (LODG.) NO. 2068 OF 2019
ALONG WITH
NOTICE OF MOTION NO. 302 OF 2019
IN
WRIT PETITION (LODG.) NO. 2068 OF 2019**

Jahangir Manekshaw Contractor
& Anr.

.. Applicants

In the matter between :

1. Jahangir Manekshaw Contractor
& Anr.

.. Petitioners

Vs.

1. The State of Maharashtra & Ors.

.. Respondents

Mr.Ashish Ved a/w. Mr.Yusuf Iqbal Yusuf, Adv. Neville Mojra, Ms.Shaista Pathan, Ms. Nikita Bangera I/b Y & A Legal for applicants/petitioners.

Mr.Hemant Haryan, AGP for respondent Nos.1 and 2-State.

Mr.Mahesh Ingle, Superintendent, Mumbai City Survey & Land Records (City) present.

**CORAM : R. M. BORDE &
N.J. JAMADAR, JJ.**

DATE : 6TH AUGUST 2019

P.C.

1. The applicants/petitioners, the owners of the residential property situated at Colaba, Mumbai, tendered an application dated 16th April 2019 to the Collector, Mumbai seeking "No objection certificate" for entering into a sale transaction in respect of the residential property in question on 16th April 2019.

2. In response to the application tendered by the petitioner, the Collector, Mumbai informed the petitioner to deposit 3% amount as 'transfer fees' computed on the basis of the market value of the residential property as prescribed in the Ready Reckoner valuation of the residential property. The petitioner was informed that upon complying the terms and conditions, as mentioned in the communication dated 21st May 2019 subject to tendering an undertaking on Rs.500 Stamp Paper, the request of the petitioner would be considered.

3. The petitioner, relying on the judgment in the matter of ***Aspi Chinoy & Anr. Vs. The State of Maharashtra & Ors.***¹ contends that it is not appropriate for the authorities to insist upon the petitioner to seek previous approval of the State as pre-condition for entering into the transaction. It is also recorded in the judgment that the State Government does not have right to ask the petitioner to seek its previous approval before entering into the transaction. Therefore, it does not have any power to demand any premium before transfer of the flat. It is categorically recorded that no permission either of the State Government or of the Collector is necessary either under the terms and conditions recorded in the Government Resolutions/Notifications issued in 1983 or 1999.

4. The view recorded in the judgment in the matter of ***Aspi Chinoy &***

1 Writ Petition No. 713/2001 decided on 29th September 2009

Anr. (Supra) has been followed in the subsequent judgment between *BSES Limited, a Company & Anr. Vs. State of Maharashtra & Ors.*². A Division Bench of this Court (Coram : R.M. Borde & N.J. Jamadar, JJ.) has, also in observance of the order in the matter of *Point Developers Private Ltd. Vs. State of Maharashtra & Ors.*³ as well as in view of the order passed by this Court earlier in the matter of *Sanskriti Co-op. Housing Soc. Ltd Vs. State of Maharashtra and Ors.*⁴ held that such a pre-condition of presentation of “No Objection Certificate” from the Collector is not at all warranted under any of the regulations or the policy prescribed by the State Government.

5. In the judgment referred to above decided by us, a direction was issued to the City Survey Officer to consider the application tendered by the petitioner and process the same without insisting upon presentation of “No Objection Certificate” from the Collector. So far as the instant petition is concerned, since obtaining 'no objection' by the Collector is not contemplated in view of the judgment of the Division Bench in *Aspi Chinoy & Anr.* (Supra), it was not at all open for the Collector to record such a pre-condition in the communication, dated 21st May 2019.

2 Writ Petition No.1694 of 2003 decided on 15-01-2018

3 Writ Petition (Lodg.) No. 1962 of 2019 dt. 31.07.2019

4 Writ Petition (Lodg.) No.165 of 2019 dt.23-01-2019

6. It is hereby clarified that for registering transaction of sale by the petitioner, by way of pre-condition, securing “No Objection” from the Collector shall not be insisted upon. The communication issued on 21st May 2019 to the petitioner shall be construed as a notice calling upon the petitioner to submit his say. It would be open for the petitioner to submit his contentions before the Collector within a period of three weeks from today. On receipt of the written reply from the petitioner, within the time stipulated period, it would be open for the Collector to pass appropriate directions as permissible in law.

7. In view of above, the writ petition stands disposed of.

8. In view of disposal for the writ petition, the notice of motion does not survive and accordingly stands disposed of.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]