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

COMMERCIAL ARBITRATION PETITION NO.539 OF 2017

Mithanagar Shri Chintamani CHS Ltd. ..Petitioner
Vs.
S.D. Construction & Ors. ..Respondents

Mr.Tushar Gujar, Mr.Deepak Singh, Mr.Harpreet Singh i/b. M/s.Solicis
Lex for Petitioner.
Mr.Pradeep Dalvi i/b. Mr.Ajit Kocharekar for Respondent Nos.1 and 2.
Mr.P.G. Lad with Ms.Sayli Apte for MHADA.

CORAM : G.S. KULKARNI, J.

DATE : 9th JULY, 2019

P.C.:

This petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) was heard from time to time. On 14 February 2019, the Court had passed the following order:-

- “1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. Though this application is pending for a quite sometime, no reply-affidavit has been filed. Learned counsel for the petitioner submits that at this stage of the proceedings, the petitioner would press for the reliefs in terms of prayer clauses (d) and (e) of the petition.
3. Mr.P.D.Dalvi learned counsel for the respondents fairly submits that in regard to the reliefs as sought in prayer clause (e), he would take instructions from his clients, and if there are any original documents in this regard, the issues can be resolved. On instructions, he would submit that in fact all the documents were handed over to the society in the year 2006 itself. As regards the prayer as made in prayer clause (d) Mr.Dalvi submits that his clients would intend to contest the issue.

4. Accordingly, stand over to 28.2.2019. No further adjournment shall be granted. Reply-affidavit be filed well-in-advance in office, as also copy of the same be served on the petitioner, well in advance.”

2. Thereafter on 17 June 2019 considering the contention as urged on behalf of respondent Nos.1 and 2 that members of the society have carried out illegal alterations contrary to the plan which was approved by the Municipal Corporation, the Court had passed the following order:-

“1. Leave to amend to implead Maharashtra Housing and Area Development Authority (MHADA) and Municipal Corporation for Greater Mumbai (MCGM) as party respondents. Amendment be carried out during the course of the day.

2. MHADA and the Municipal Corporation are directed to consider the issues which are involved in this petition and more particularly when it is an admitted fact that the members of the society are occupying the building in question since 2008 without an 'Occupation Certificate' being granted by the Municipal Corporation. MHADA has also raised a concern in this regard by letter dated 22 February 2019 bearing outward no.Ka.A/go.vi./Mu.M./524/19. Learned Counsel for the petitioner would not dispute that the members of the petitioner are occupying the building since 2008. The petitioner-society has now prayed for certain reliefs in this petition against the respondent who is stated to be a developer, which are diverse reliefs which read as under:-

(a) that pending the arbitration/invoke of arbitration proceedings and till the implementation of Arbitration Award, this Hon'ble Court be pleased to direct the Respondents to comply with the statutory obligations under MOFA and procure the Occupation Certificate and Building Completion Certificate in a time bound manner.

(b) that pending the arbitration /invoke of arbitration proceedings and till the implementation of Arbitration Award, the Respondents, their servants and agents be directed to comply with the obligations

under the Development Agreement dated 22nd February, 2003 and Memorandum of Understanding dated 22 November, 2010 in a time bound manner;

(c) that pending the arbitration/ invocation of arbitration proceedings and till the implementation of Arbitration Award, this Hon'ble Court be pleased to direct the Respondents to execute Permanent Alternate Accommodation Agreements with each member of the Petitioner Society; entirely at the cost and expenses of the Respondents;

(d) that pending the hearing and disposal of the Arbitration Petition, this Hon'ble Court be pleased to direct the Respondent to pay

(i) Rs.61,80,519/- towards the outstanding water/sewerage charges payable to the Statutory Authorities/Corporation;

(ii) Rs.2,60,790/- towards the property taxes payable to the Statutory Authorities/Corporation;

(iii) Rs.2,48,832/- towards the outstanding charges payable to the Statutory Authorities for the water utilized during the period of construction by the Respondent.

(e) that pending the hearing and disposal of the Arbitration Petition, the Respondents, their servants and agents be directed by an order of this Hon'ble Court to hand over the Original Conveyance Deed, Original Property Card, Approved plans, sanction and any other documents in the custody and possession of the Respondent to the Petitioner Society in a time bound manner;

(f) that pending the hearing and disposal of the Arbitration Petition, Respondent's its Directors/partners/officers, agents, servants be directed to Disclose on oath all documentation, approvals, sanctions and other correspondences in respect of the said project so submitted to various authorities for approval;

(g) that pending the hearing and disposal of the Arbitration Petition, Respondent its Directors/partners/ officers/ agents, servants be directed to disclose on oath all the details of development agreements so entered into by the Respondent with

third parties in the last 10 years and the breaches committed by the respondent qua the Sale Deeds/Agreements/ Permanent Accommodation Agreements/ Development Agreement, status of all projects undertaken by the Respondent its partners/ proprietor jointly or with association with third parties, including the exact consideration so received towards the sale of flats in the free sale category and the exact civil and criminal cases pending against the Respondents;

(h) Pending the hearing and final disposal of the present Petition/ arbitration proceedings, this Hon'ble Court be pleased to appoint a Court Commissioner/Architect to inspect the said project and submit a report as to the status of construction, illegalities in construction and exact nature of approvals and sanctions required to be procured for regularization/legality of the project and other breaches in respect of the said Project qua the Development Agreement and Memorandum of Understanding to this Hon'ble Court in a time bound manner."

3. The respondents have appeared and placed on record a reply affidavit to state that the members of the petitioner are illegally occupying the building in question/respective tenements and after having occupied without any authority in law, the members have committed several acts and have made additions and alterations to the respective flats and which are contrary to the sanctioned/approved plans. It is submitted this being a situation of illegal alteration as made by the members of the petitioner, then the respondents cannot be held liable for any lapses. It is submitted that the respondents were always ready and willing to hand over plans to the petitioners and the same would be handed over to the petitioner as per order dated 14 February 2019 passed by this Court, within one week from today. Statement is accepted.

4. Prima facie it is quite serious and objectionable that the members of the petitioner have occupied the building in question without a completion certificate/occupation certificate being granted by the statutory authorities. It is also surprising that although the authorities are aware that the members of the petitioner are illegally occupying the tenements, no steps have been taken against those occupants who are illegally occupying the premises. All these issues are required to be gone into as noted above and

the MHADA and the Municipal Corporation are required to be heard on these issues.

5. Accordingly, issue notice to MHADA and Municipal Corporation returnable on 24 June 2019. High on Board. In addition to Court notice, Advocate for the petitioner is permitted to serve the notice on the Law Officers of the MHADA and the Municipal Corporation, alongwith the copies of all the pleadings including the petition and copies of the affidavits.

6. Needless to observe that in the above circumstances, the members of the society shall occupy their respective premises at their own risk and consequences. In the event of any unfortunate incidence, the members of the society shall not hold the Municipal Corporation or MHADA or the respondent-developer responsible and shall not have any claim against them. The parties are further put to notice that the legal consequence of such illegal occupation by the respective parties, is eviction of these persons, till the construction is regularised and/or certified fit for occupancy, then the Corporation may be called upon to take appropriate measures, till the premises are declared fit for human habitation, and that there is no danger to the life and property of the persons residing in the said building. Ordered accordingly.

7. Stand over 24 June 2019. High On board.”

3. It is on this background, Mr.Lad has entered appearance on behalf of MHADA which is stated to be now the planning authority in respect of the construction which is undertaken by the petitioner as the land belongs to MHADA.

4. Mr.Dalvi, learned Counsel for the Respondent No.1 has stated that whatever documents the petitioner wants, shall be furnished to the petitioner by respondent Nos.1 and 2. Statement of Mr.Dalvi is accepted. Mr.Dalvi, learned Counsel for respondent Nos.1 and 2 also submits that his client would provide all cooperation to enable the

petitioner society to obtain a occupation certificate.

5. Learned Counsel for the petitioner would thus submit that his client would appoint an Architect and along with all the documents which his clients have received and would receive if any remaining from Respondent Nos.1 and 2, shall be making a formal application to MHADA within three weeks from today so that MHADA can consider the application for grant of occupation certificate. Mr. Lad states that application is required to be made by the petitioner to the Executive Engineer (Building Sale).

6. In the circumstances, it may not be necessary for this Court at this stage to adjudicate the present proceedings. If the petitioner has any disputes in regard to the quality of construction or any other issues pertaining to construction against respondent No.1, rights of the parties are expressly kept open. Once a proposal is submitted to the Executive Engineer (Building Sale), the same shall be considered and appropriate decision shall be taken by the MHADA within three months from the date of submission of the proposal by the petitioner-society.

7. Needless to observe that however in the meantime the order dated 17 June 2019 passed by this court and more particularly the directions as contained in paragraph 6 shall remain in operation till occupation

certificate is granted.

8. It is further clarified that this order is in no manner any recognition of the illegal occupancy of the occupants of the building and/or restricts any of the power and authority of the MHADA as available in law to take such appropriate action in the facts and circumstances of the case under law. This order is also in no manner any adjudication or any opinion on the merits of the disputes between the parties.

9. The petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]