

WRIT PETITION (L) NO. 2760 OF 2019

VERSUS

3. New D.N.Nagar Co-operative Housing Societies Union Limited,
a union of 10 individual co-operative housing societies, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, having its office at Sagar Sahawas Colony, New D.N.Nagar, Juhu Link Road, Andheri (W), Mumbai – 400 053

..... Respondents

Mr.Virag Tulzapurkar, Senior Advocate, a/w. Ms.Sowmya Srikrishna, Mr.Denzil Arambhan, Ms.Apeksha Munot, i/b. M/s.Wadia Ghandy & Co. for the Petitioner.

Mr.P.G.Lad, a/w. Ms.Aparna Kalathil for the Respondent nos. 1 and 2, MHADA.

Mr.Chirag Kamdar, a/w. Mr.R.S.Ghadge for the Respondent no.3.

CORAM : R.D. DHANUKA, J.

DATE : 11th OCTOBER, 2019

ORAL JUDGMENT

Rule. Mr.Lad, learned counsel for the respondent nos. 1 and 2 waives service. Mr.Kamdar, learned counsel for the respondent no.3 waives service.

2. By consent of parties, petition is heard finally. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 18th September,2019 passed by the Executing Engineer, Building Permission Department,B.M.,MHADA refusing the subsequent sanction to the application for further commencement certificate made by the petitioner on the ground that the assurance was given by the learned Minister, Housing, building permission for the project in question was suspended.

4. The petitioner has been granted various permissions from time to time by MHADA for carrying out construction of the various buildings. Some of the buildings are already constructed by the petitioner pursuant to those permission. The petitioner had applied for issuance

of further commencement certificate upto 13 upper floors.

5. The petitioner was issued an order dated 18th September, 2019 by the Executive Engineer thereby refusing to grant sanction for further commencement certificate in view of the assurance given by the learned Minister in the Assembly to take action against the petitioner.

6. Mr. Tulzapurkar, learned senior counsel for the petitioner invited my attention to the letter dated 5th August, 2019 addressed by the Housing Department to the Vice-President of MHADA stating that a call attention motion was issued by the Secretariat of the Maharashtra Legislature Assembly alongwith a copy of the statement given by the Government. A discussion took place in the Maharashtra Legislative Assembly on 26th June, 2019. It is stated that in the said meeting of the Assembly, an assurance was given by the Housing Minister to take action against the petitioner. The Vice-President, MHADA was issued following direction. "Vice-President of MHADA to take decision post confirmation of the facts and keep apprised the Government about the decision". By the said communication, the Housing Department requested the Vice-President of MHADA to take action post taking into consideration the assurances given by the Hon'ble Minister as recorded in the minutes of the meeting and to submit report without any delay in respect of the action taken by the Vice-President alongwith his remarks.

7. Learned senior counsel invited my attention to the letter dated 18th September, 2019 rejecting the proposal for further commencement certificate applied by the petitioner and directing the stoppage of ongoing work. Learned senior counsel invited my attention to some of

the averments made in the affidavit in reply filed by the MHADA and more particularly paragraph (7). He submits that the MHADA in the said affidavit has clearly admitted that the petitioner has complied with all requisite conditions for grant of permissions and has also paid necessary charges. However, in view of the directions issued by the State Government to stop work notice, the said notice came to be issued by the MHADA and MHADA is not in position to issue commencement certificate for further work.

8. It is submitted by the learned senior counsel that the respondent no.1 has pressed in service section 164 of the Maharashtra Housing and Area Development Act, 1976 for issuing the stop work notice issued to the petitioner. It is submitted by the learned senior counsel that under the said provision of section 164, the State Government is empowered to give directions only in respect of the finances and conduct of the business and affairs of the authority or any Board. He submits that section 164 of the MHADA is not at all attracted to the facts of this case. No directions are issued by the State Government relating to the finances or conduct of the business affairs of the authority.

9. It is submitted that even if section 164 of MHADA stands attracted, none of the directions are issued by the State Government to MHADA to reject the application of the petitioner for grant of further commencement certificate or to issue stop work notice.

10. Learned senior counsel submits that even by said letter dated 5th August, 2019 issued by the Housing Department to the Vice-President, there was no stay granted by the Housing Minister nor any direction was issued not to issue any further commencement certificate. He

submits that the said letter atmost directs the Vice-President, MHADA to conduct an enquiry regarding factual position and after conducting such enquiry, to submit a report before the State Government. He submits neither any enquiry was conducted by the Vice-President of MHADA nor any report was submitted to the State Government for further action against the petitioner.

11. Learned senior counsel submits that in this case, MHADA has acted as a planning authority and thus action, if any, which could be taken by the MHADA as a planning authority could be only under section 54 read with section 52 of the Maharashtra Regional and Town Planning Act, 1966 for alleged breaches set out in section 52. He submits that in this case, the respondent no.1 who acts as a planning authority has not pointed out any breaches alleged to have been committed by the petitioner under section 52 of MRTP Act and thus could not have issued any stop work notice against the petitioner. Learned senior counsel also placed reliance on section 154 of the MRTP Act and would submit that atmost the State Government is empowered to issue certain directions to the authority under section 154 provided such directions are not in conflict with or contrary to the provisions of MRTP Act. He submits that neither any such directions are issued by the State Government under section 154 of MRTP Act to the MHADA nor MHADA could issue any stop work notice based on such provision.

12. Learned senior counsel also invited my attention to the averments made by the MHADA in paragraph (4) of the affidavit in reply and would submit that the said allegations are factually incorrect. The petitioner has already handed over the possession of 480

tenaments to the respondent no.3 society. At this stage, Mr.Kamdar, learned counsel for the respondent no.3 confirms that the society has already received vacant possession of 480 tenaments from the petitioner. Statement made by the learned counsel is accepted.

13. Learned senior counsel invited my attention to the order passed by this court on 17th November,2017 in Writ Petition No.624 of 2017 with Writ Petition No.451 of 2017 which was filed by this petitioner itself against the respondent nos.1 and 2 and would submit that even in past, similar illegal action was taken by the respondent nos. 1 and 2 against the petitioner. This court by the said order dated 17th November,2017 had passed strictures against MHADA and had quashed and set aside the similar action taken by the MHADA in the said writ petition. He submits that inspite of the said order passed by this court, passing strictures against MHADA for similar action, at the instance of an issue raised by one of the member of the Legislative Assembly in Maharashtra Legislative Assembly which was also raised by the same member of the Legislative Assembly who has also raised similar issue again against the petitioner, the respondent no.1 again committed illegality by taking similar action.

14. Learned senior counsel placed reliance on judgment of Supreme Court in case of ***Laxminarayan R.Bhattad and others vs.State of Maharashtra and another, (2003) 5 SCC 413*** and more particularly paragraph (51) in support of the submission that even if any action could be initiated by the State Government under section 154 of MRTP Act, the said direction could not be contrary to the statute or the statutory regulations under MRTP Act.

15. Mr.Lad, learned counsel for the respondent nos. 1 and 2 on the other hand invited my attention to some of the annexures to the affidavit in reply filed by the respondent no.1 and more particularly the minutes of the meeting of the Maharashtra Legislative Assembly and would submit that in the said meeting, the learned Housing Minister had given an assurance to the members of the Assembly present in the said meeting that an appropriate action would be taken against the petitioner in respect of the alleged contravention of law. He submits that the said assurance made by the learned Minister on the floor of the Assembly was considered by the respondent no.1 as an order of stay and accordingly directed the petitioner to stop work and refused to grant any further commencement certificate in respect of the ongoing project of the petitioner.

16. In support of this submission, learned counsel strongly placed reliance on the letter issued by the Housing Department to the Vice-President on 5th August,2019 annexed at Ex.I to the affidavit in reply and would submit that the said direction was a direction issued to the MHADA under section 164 of the MHAD Act. He submits that MHADA being an authority defined under the provisions of the said Act was bound by such directives issued by the State Government under section 164 of the MHAD Act and thus the action taken by the respondent no.1 to issue stop work notice and to refuse to grant further commencement certificate cannot be faulted with.

17. Mr.Lad, learned counsel for the respondent nos. 1 and 2 does not dispute that the petitioner has already complied with all the requisite conditions as is apparent in paragraph (7) of the affidavit in reply filed by the respondent nos. 1 and 2. He submits that the respondent no.1

being planning authority, could not refuse to comply with the directions issued by the State Government.

18. Mr.Tulzapurkar, learned senior counsel for the petitioner in rejoinder would submit that no part of section 164 would be attracted to the facts of this case. He submits that even if the arguments of Mr.Lad, learned counsel for the respondent nos. 1 and 2 are accepted that section 164 (2) of MHADA is applicable to the facts of this case, MHADA has not come out with the case as to which condition of section 164(2) is attracted to the facts of this case or which resolution or order or action of the MHADA would affect the public interest.

19. A perusal of the documents annexed to the petition clearly indicates that the respondent no.1 has issued a stop work notice and has refused to grant further commencement certificate in favour of the petitioner relying upon the assurance given by the Housing Minister in the Assembly. A perusal of the said letter dated 5th August, 2019 indicates that there is a reference made to the discussion held in the Maharashtra Legislative Assembly in the meeting held on 26th June, 2019. The minutes of the said meeting placed on record by Mr.Lad, learned counsel for the respondent nos. 1 and 2 indicates that one of the member of the Legislative Assembly had raised an issue about the alleged contravention of law by the petitioner.

20. In response to the said issue raised by one of the Member of the Legislative Assembly, the learned Housing Minister made an assurance that an action would be initiated against the petitioner. A perusal of the said letter dated 5th August, 2019 clearly indicates that the Vice-President of MHADA was requested to take decision post confirmation

of facts and to keep appraise the State Government.

21. It is not in dispute that the respondent nos. 1 and 2 neither conducted any enquiry pursuant to the said letter issued by the Housing Department on 5th August, 2019 nor submitted any report to the Government about any further action.

22. In my view merely because an assurance is made by the learned Minister on the floor of the Maharashtra Legislative Assembly that an action would be taken against a member of public dealing with MHADA, such assurance given by the learned Minister cannot be elevated to an order passed by the State Government to be binding on MHADA for initiation of an action against a member of public dealing with MHADA.

23. Be that as it may, a perusal of section 164 of MHADA clearly indicates that the State Government may issue directions or instructions only in regard to the finances and conduct of business and affairs of the authority or any board. A conjoint reading of section 164 (1) and (2) (a) indicates that if any such resolution or order of the authority which is likely to lead to abuse or misuse of or to cause waste of the fund of the authority, only in such circumstances, the State Government may issue a direction in public interest.

24. In my view, section 164 of the MHADA would not attract in this situation. Even if section 164 is attracted, in my view since MHADA has not demonstrated before this court that the State Government was of the opinion that the permission granted in favour of the petitioner would lead to abuse or misuse or would cause waste of the funds of the

authority, the conditions prescribed in the said provision are not satisfied in the facts of this case.

25. Learned counsel for the respondent nos. 1 and 2 does not dispute that the MHADA in this case has acted as a planning authority defined under the provisions of the Maharashtra Regional and Town Planning Act, 1966. A perusal of section 54 of the MRTP Act which has to be read with section 52 clearly indicates that the planning authority is empowered to issue stop work notice under section 54 only if any of the breaches as provided under section 52 of the MRTP Act is committed. Admittedly in this case the respondent no.1 has not invoked or pressed in service the powers exercised under section 54 read with section 52 of the MRTP Act.

26. A perusal of the order dated 17th November, 2017 passed by Shri Justice G.S.Patel in Writ Petition No.624 of 2017 which was filed by the petitioner against the MHADA and others clearly indicates that a similar action initiated by the MHADA at the instance of the same Member of Legislative Assembly who had raised an issue before the Maharashtra Legislative Assembly alleging breaches of the provisions of law by the petitioner was the subject matter of the said writ petition. In the said matter also the MHADA had issued stop work notice. This court in paragraph (6) of the said judgment has observed that there seems to be something of a synaptic failure between what was said in the Assembly, what was communicated to MHADA and what MHADA then actually did. The Government secretary himself did not understand the proceedings in the House as imposing a stay and quite rightly so, because the Assembly could not in the course of any debate issue a stay. All that was noted was a statement made by the Hon'ble

Chief Minister. This court also observed that the MHADA chose to elevate the communication to a full-scale stay on the free-sale component. Though in similar facts this court was pleased to quash and set aside the action of MHADA after passing strong observations against the conduct of MHADA, the MHADA once again refused to grant further commencement certificate and issued stop work notice against the petitioner by considering the said assurance of the Housing Minister as an order under section 164 of MHADA.

27. In my view, at the first instance, the learned Minister himself could not have granted any stay on the floor of Maharashtra Legislative Assembly against MHADA from issuing any further commencement certificate or could not have issued any direction to stop work notice and that also without following the provisions of law. Be that as it may, no such directions were issued by the State Government under section 164 and thus the respondent nos. 1 and 2 were not bound to issue any such stop work notice or could not have refused to issue any further commencement certificate on the premise that such directions would fall under section 164 of MHADA and were binding upon the MHADA.

28. A perusal of para 7 of affidavit in reply filed by MHADA clearly indicates that it is an admitted position that the petitioner has complied with all the requisite conditions. The petitioner's amended plan is also approved on 10th May, 2019. The petitioner has also admittedly paid the requisite charges. In my view the action of the respondent nos. 1 and 2 in refusing to grant further commencement certificate and to issue further stop work notice is totally illegal and contrary to provision of MHADA as well as the provisions of MRTP Act, 1966.

29. I, therefore, pass the following order :-

(a) Writ petition is allowed in terms of prayer clauses (a) and (c).

(b) Rule is made absolute on aforesaid terms.

(c) The respondent nos. 1 and 2 are directed to issue further commencement certificate within two weeks from today.

(d) The parties to act on the authenticated copy of this order.

(e) No order as to costs.

[R.D.DHANUKA, J.]