

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO.2792 OF 2020**

M/s. Salangpur Gruh Nirman ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

Mr.Suraj Naik for the Petitioner.

Mr.Y.S.Kochare, AGP for the State.

Mr.N.R.Bubna for Respondent Nos. 2 and 3.

**CORAM : S.J.KATHAWALLA, &
R.I. CHAGLA, JJ.**

DATE : 12TH MARCH, 2020

P.C. :

1. By the above Writ Petition, the Petitioner seek the following relief :

“(a) This Court be pleased to issue a Writ of Mandamus, orders, directions or any other appropriate Writ in that nature, directing Respondent Nos. 2 and 3 to forthwith issue Occupation Certificate to the Petitioner in respect of Building No. A consisting Part Ground + Seven Upper Floors and Building No. B consisting of Part Ground + Part of Eight Upper Floors, totally admeasuring 3860.89 sq. meters standing in the layout of land the bearing Old Survey No. 250, New Survey No. 46, Hissa No. 2, admeasuring 2830 sq. meters and an area admeasuring 91 sq. meters forming the portion of land bearing Old Survey No. 251, New Survey No. 47, Hissa No. 12, situate

at Village Nanghar, Bhyandar (East), Taluka and District Thane.”

2. The learned Advocate appearing for the Corporation on instructions states that the occupation certificate (OC) is not granted to the Petitioner in view of the Special Civil Suit No. 795 of 2011 filed before the Civil Judge, Senior Division, Thane, wherein an order is passed on 3rd April, 2019 restraining the Defendants therein from creating third party interest by any mode of transfer in respect of 1/7th share in the Suit property.

3. The learned Advocate appearing for the Petitioner has pointed out that the said Suit is filed by the original owners against the confirming party. Though the Petitioner is a party to the Agreement, the Petitioner is not joined as party Defendant to the Suit and no reliefs are sought or obtained against the Petitioner. The Petitioner has constructed two buildings and has executed registered agreements in favour of the flat purchasers who are to be handed over possession of their respective flats. The Corporation therefore cannot refuse the OC on the pretext of the order dated 3rd April, 2019 passed in the said Suit, which is not filed against the Petitioner and no relief is obtained against the Petitioner.

4. We are in agreement with the submissions made on behalf of the Petitioner. In view thereof, we direct the Corporation to consider the grant of OC to the Petitioner if all other requirements are complied with.

5. The learned Advocate appearing for the Petitioner shall forthwith forward a copy of this Order to the Plaintiff in Special Civil Suit No. 795 of 2011.
6. The Writ Petition is accordingly disposed off.

(R.I. CHAGLA, J.)

(S.J.KATHAWALLA, J.)