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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.470 OF 2020

Kunbi Samajonnati Sangh, Mumbai ...Petitioner
vs
The Collector, Mumbai Suburban And 2 Ors. ...Respondents
.....
Mr. Sanjiv Sawant, i/b. Mr. Samir M. Suryawanshi, for the Petitioner.
Mr. L.T. Satelkar, AGP, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 18 FEBRUARY, 2020

P.C.:

. Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of Counsel.

2. This petition challenges an order passed by Collector, Mumbai Suburban District on 29 August 2018. By the impugned order, the Collector has demanded a sum of Rs.28,50,165/- from the Petitioner society for allotment of a plot of land to it.

3. The Petitioner is an allottee of land under Government Land Disposal Rules. The Petitioner is a public charitable trust. The allotment of land to it was for construction of a student hostel. It is submitted that the original allotment was made as far back as in 1983. Based on this allotment, a demand was made for payment of land price at a

concessional rate, since the Petitioner was a charitable trust. That was in 1990. The Petitioner, accordingly, proceeded to pay a sum of Rs.28,596/- towards such concessional land price. Since, however, the plot was encroached by slum dwellers, no development could take place. An SRA scheme was, thereupon, sanctioned by the Slum Rehabilitation Authority ("SRA") in respect of the subject plot of land together with other adjoining land. This scheme was for eight different societies including the Petitioner. On 23 January 2009, even an LOI was issued by SRA for the scheme, according to which, land premium was deposited by the developer. Under the LOI, a portion of the land, forming part of the composite development scheme, has been allotted to the Petitioner society for construction of a student hostel. In the backdrop of these facts, by its communication dated 10 February 2017, the Collector demanded premium from all eight societies, who were part of the composite redevelopment including the Petitioner, who was to be allotted 879.90 sq.mtrs. of land forming part of the larger piece of land. The demand in the case of the Petitioner was for a sum of Rs.25,58,749/- towards principal amount of concessional price in accordance with the ready reckoner of 2007 and a further sum of Rs.27,58,078/- towards interest. This order was the subject matter of challenge in a writ petition filed by the federation of eight societies. At the hearing of the petition, this Court noted that whilst the federation was not averse to paying additional land premium over and above what was proposed in the year 1983-84, it objected to the proposed levy of interest on this premium. It was submitted that the land premium was determined and communicated to the Petitioner for the first time by the impugned order of 10 February 2017 and such premium not having

been actually demanded at any time, no interest could be claimed from the occupant societies. At that stage, learned Additional Government Pleader, on instructions of the Respondent State, had submitted that if a proper application was made by the federation of societies for waiver of interest, in the circumstances alleged, the State shall decide the same, after taking into account relevant circumstances of the case. This Court, accordingly, disposed of the petition by quashing and setting aside the impugned order of 10 February 2017 directing payment of interest and reserved liberty unto the parties to re-agitate the issue of interest before the Collector. The Collector was directed to consider the representation to be made by the federation of societies and after hearing the societies and their representatives, decide the same in a time bound manner.

4. The above narration makes it clear that, by the impugned order, the Collector was supposed to have decided finally the issue of premium, including that of interest chargeable. By his impugned order, the Collector has maintained the land premium, as originally communicated vide order dated 10 February 2017, but reduced the interest in the case of the Petitioner to Rs.3,20,012/-. This interest has been said to be due from 10 February 2017. The present petition challenges the land premium determined by the Collector and also the interest charged thereon.

5. So far as the land premium is concerned, it was admittedly communicated to all eight societies, including the Petitioner herein, by the communication of 10 February 2017. When this communication was challenged by the federation of societies before this Court, a clear

statement was made before the Court on behalf of the federation that the societies represented by the federation were not averse to payment of principal amount of land premium; what they were opposed to was the charge of interest. Considering this grievance of the societies, the order of 10 February 2017 impugned in that petition was quashed and set aside and the matter was directed to be determined by the Collector including the issue of interest to be charged. In the circumstances, it is not permissible for the Petitioner society to challenge the quantum of principal amount of land premium.

6. So far as interest is concerned, it is by no means clear why and how interest should be charged with effect from 10 February 2017. No doubt, 10 February 2017 was a date of communication of land premium. The communication, however, also conveyed the interest to be charged on this premium. The communication had been the subject matter of challenge, as noted above, in the earlier petition filed by the federation on behalf of all eight allottee societies, including the Petitioner herein. On their application, the communication was set aside by this Court and the Collector was called upon to determine the issue afresh. In the premises, there is no apparent reason why interest should be charged on the premium amount with effect from 10 February 2017. After all that communication was set aside by this Court and the land premium was directed to be redetermined by the Collector. After such re-determination, the premium was conveyed for the first time to the allottee societies, including the Petitioner herein, when the communication impugned in the present petition was issued, namely, on 29 August 2018. If that is so, there is no legal basis for charging

interest on the premium now communicated to the allottee societies. The interest part of the impugned order dated 29 August 2018, thus, deserves to be quashed and set aside, whilst the rest of the order deserves to be sustained.

7. Accordingly, Rule is made absolute and the petition is partly allowed by quashing and setting aside the component of interest of Rs.3,25,102/- included in the impugned communication dated 29 August 2018. The Petitioner shall be liable to pay the land premium of Rs.25,30,153/- in pursuance of the impugned communication. Upon payment of such premium, the allotment shall be confirmed in favour of the Petitioner society. The Court is informed that the Petitioner society has already paid a part premium of Rs.7 lakhs on 20 December 2019. The Petitioner society shall pay the balance amount, that is to say, a sum of Rs.18,30,153/- to the Collector towards full and final payment of land premium.

8. Cheques deposited by the Petitioner with the Collector of future dates towards payment of the balance premium shall be returned by the Collector against substitution of fresh cheques aggregating to the balance amount of land premium in accordance with this order. The petition is disposed of accordingly.

(S.C. GUPTE, J.)