Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 562 OF 2017
AND
INTERIM APPLICATION NO. 1 OF 2020

Sanjiv Laxmichand Hinduja & Ankita Sanjiv Hinduja ...Petitioners

Versus

Uma Constructions & Ors ...Respondents

Mr Siddharth Chhabria, *i/b Priyanka Chhabria, for the Petitioners.*
Mr DD Madon, Senior Advocate, *with Rashmin Khandekar, Deepa Bisht & Chirag Saraogi, i/b Tushar Goradia, for Respondents Nos. 2 & 3.*
Dr Birenda Saraf, *with Mayur Khandeparkar & Satchit Bhogle, i/b Nitin Parkhe, for Respondent No. 4.*
Mr Sagar Patil,*w tih Mr DS Shingade, for MCGM.*
Mr Subodh Wavhal, *Superintendent, H/West Ward, present.*
Mr Sabah S Parkar, *Ward Inspector, Sector 26, H/West Ward, present.*
Ms Ankita Singhania, *with Ms Princee Vaishnav, i/b Prime Legem, for the Intervenors/Applicants.*

CORAM: G.S. PATEL, J.
DATED: 30th January 2020

PC:-

1. This is further to the order of 21st January 2020.

2. Pravin Talreja, one of the third party purchasers, and the person mentioned in paragraph 8 of that order is represented in Court. He has agreements to purchase flat Nos. 801, 901 and 902. On that date I noted Mr Madon's submission that Rs. 96,18,000/- was due from Talreja and that a demand had been issued in that demand. It is made clear that as between Pravin Talreja, Uma Constructions and Respondents Nos. 2 and 3, all contentions are left open for appropriate proceedings in regard to the agreements to which Mr Talreja is a party. I am not permitting Talreja to enter a vakalatnama in this petition. I clarify that what is stated in paragraph 8 is merely a noting of the submission made by Mr Madon on that date and not a finding returned by this Court. Again, at the cost of repetition, all contentions are expressly kept open.

3. This will apply to all third party flat purchasers with whom Respondents Nos. 2 and 3 have had dealings.

4. The MCGM was required by the order of 16th January 2020 to check its records and inform the Court of what amounts were due, if any towards unpaid property tax/assessment charges.

5. It has presented a tabulation with supporting documents claiming that now there is an amount of Rs. 96,17,051/- that is due towards property tax. This is astonishing and is clearly not believable. The reason is plain. Since March 2018, there have been five separate orders of SJ Kathawalla J specifically dealing with this contention regarding unpaid property tax. Initially the claim from the MCGM was for Rs. 58,33,978/- for the period from 1st April 2010 to 31st March 2018. This is noted in the order dated 5th March 2018.

6. The next order of relevance is of 27th March 2018 when the Assistant Assessor was directed to place before this Court a revised working as of that date and this had to be done after taking into consideration that the commencement certificate was issued on 3rd February 2012.

7. On 9th April 2018 the Corporation revised its demand. The order of that date reads thus:

> "1. Respondent No.1 Developer entered into a Development Agreement with the Society on 3rd September 2009. The IOD was issued by the Corporation to the Respondent No.1 Developer on 2nd March 2010. In January – 2012, the Petitioners/Applicants handed over possession of their respective premises to the developer, after which the building was demolished. On 31st March 2018, the Developer has given possession of the flats to the tenants/members for fit outs. The developer has not obtained occupation certificate till date. Since the Respondent No.1 Developer has not paid the property tax, the Corporation attached the Suit property on 15th March 2018 At that time, the Corporation claimed an amount of Rs.58,33,978/- towards arrears of property tax. On 2nd April 2018 the Corporation was directed to issue a revised bill on or before 9th April 2018. The Petitioners and the Respondents also gave an undertaking to this Court to pay

the property taxes as demanded by the Corporation or as ordered by the Court.

2. **The Corporation has now issued a revised bill of Rs.62,03,259/-,** wherein they have given a break-up i.e. an amount of Rs.20,485/- is to be paid by the Society (for the period prior to the IOD issued by the Corporation to the developer) and an amount of Rs.61,82,754/- payable by the developer. **Since the Corporation will proceed to sell the property which is already attached, since the Respondent No.1 Developer is directed to pay its share of Rs.61,82,754/- and the Society is directed to pay its share of Rs.20,485/- to the Corporation** within a period of one week from today. It is clarified that if the developer or the Society have any dispute qua the property tax charged by the Corporation, they may pay the amounts under protest.

3. The Executive Engineer, H/West Ward, Mumbai shall visit the Suit premises and submit his report to this Court on 16th April 2018 at 3.00 pm informing the Court whether the construction carried by the developer is as per the sanctioned plans and as to when the OC shall be issued qua the Suit project."

(*Emphasis added*)

8. It seems that thereafter the 1st Respondent firm and the Society paid their respective shares of the enhanced demand of Rs. 61,82,754/- and there is evidence showing this payment. This evidently covered the period up to 31st March 2018.

9. The next order of 27th April 2018 notes the statement on behalf of the MCGM by its Advocate that the partners of the firm had made payments towards property tax. Their statement was accepted.

10. Mr Madon states that thereafter the firm has paid the amount due up to September 2018.

11. There is a notice of demand of property taxes dated 12th December 2019. It is in the aggregate amount of Rs. 17,55,028/- and covers three bill periods, October 2018 to 31st March 2019; 1st April 2019 to 30th September 2019; and 1st October 2019 to 31st March 2020. Mr Madon makes a statement on instructions that this entire amount will be paid in proportions previously directed between Mr Madon's client and Dr Saraf's client, i.e. 50% each. The statement is supported by Dr Saraf as well for the 4th Respondent. There is a demand notice threatening property auction pasted on the building.

12. In this situation, it is inconceivable that the MCGM could have used my order of 16th January 2020 to go back in history to 2012 or 2013 and raise a fresh demand now for Rs. 96,17,051/-. The explanation offered across the bar and said to be on instructions of one Mr. Subodh Waval, Superintendent H/West Ward and one Mr Sabha S Parkar, Ward Inspector of H/West Ward is that there was a 'computer error'. On further questioning, they now say that in the calculations of earlier property tax demands, the FSI assumed was 1.00 but it was found that the actual consumption of FSI was 2.00. This is even more unbelievable, because I cannot understand how the MCGM, which is the Planning Authority and the Sanctioning Authority does not know what FSI was utilized or permitted in plans that the MCGM itself sanctioned. Then it is suggested, again without any basis that I can tell, that there was a computer error in the Building Proposals Department. How and why these two gentlemen from the Assessor's Office wandered off into the Building Proposal Department and who gave them the authority to do that is unclear. Nothing in my order permitted to go off on any such fishing expedition.

13. Nothing that is stated in this compilation is even remotely credible. All these bills are generated yesterday, 29th January 2020. They have never been raised at any point, despite, as I noted, multiple opportunities from 2018 before Kathawalla J. Even at that time nobody pointed out this alleged computer error or FSI discrepancy. Nobody from Building Proposals attests to any such error, computer or otherwise. As I have already commented, it is utterly inconceivable that the actual FSI consumption could be erroneously reckoned. Certainly nothing permitted these two gentleman to go on this kind of a roving inquiry to make more and more demands. This compilation is rejected.

14. Only for the sake of order, I am taking it on record and marking it "X1" for identification with today's date. The demand notice of 12th December 2019 for 17,55,028/- is also taken on record and marked "X2" for identification with today's date. The warrant of attachment pasted on site and said to be dated 12th December 2019 is taken on record and marked "X3" for identification with today's date.

15. At this stage, on instructions Mr Patil withdraws the demand. This is noted. It is however subject to Mr Madon and Dr Saraf's statements on instructions that the amount of Rs. 17,55,028/- will be paid within a period of four weeks from today.

16. As to the requirements from the Chief Fire Officer, there is a communication of 30th January 2020. Of course, the gentleman in question does not himself think it is necessary to remain present to explain what he demands; and an explanation is undoubtedly necessary. The eight points in this communication read thus:

> "1. No door provided to the electric meter room, electric meters are not installed in the electric meter room.
>
> 2. Electric shaft not sealed properly at each floor, no inspection door (FRD) provided to the cable shaft at each floor level.
>
> **3. Both the car lift work not completed.**
>
> 4. No FRD provided to the kitchen of each flat on every floor.
>
> **5. Fitness centre & society office not provided on the 6th floor.**
>
> 6. For Refuge area on 7th floor **and on the terrace no drinking water facility** & no emergency lighting provided.
>
> 7. No proper signages for exit, for staircases etc provided.
>
> 8. No door closure provided to staircase door for the 2nd staircase on each floor."

(*Emphasis added*)

17. I am treating these as final. There will be no further requisitions from this Chief Fire Officer.

18. Of these eight items, I am rejecting item Nos. 3, 5 and a part of item 6.

19. Item 3 about the operation of the car lifts is not the concern of the Chief Fire Officer. These are lifts to move cars into stack parking. It is nothing whatever to do with the Chief Fire Officer.

20. Similarly item 5 is incomprehensible and I do not know why the Chief Fire Officer thinks it necessary that the building should have a fitness centre at all let alone have it on a particular floor or that the fitness centre and the society office should be on the same floor. That is rejected as well.

21. The portion of the item 6 that says that there is no drinking water on the terrace is obviously not something that can be necessary in regard to fire safety. I can understand if the requirement is that there has to be emergency water supply for extinguishing a fire but that is clearly not the requirement that is stated.

22. Hence, these three items will be eliminated and the Chief Fire Officer will not insist on compliance with these three items at any stage between now and the issuance of the completion certificate.

23. To make it abundantly clear, no officer of the MCGM is to withhold the occupation certificate on the ground of non-compliance with items 3, 5 and the drinking water facility on the terrace not being provided.

24. This letter is signed by the Assistant Deputy Fire Officer and the Inspecting Officer and is counter signed by the Deputy Chief Fire Officer. This communication is taken on record and marked "X4" for identification with today's date.

25. The covering letter of 29th January 2020 issued by the Executive Engineer, Building Proposals lists seven pending compliances as follows:

> "1. Completion of balance work as per last approved plan.
>
> 2. Latest NOC from Assessment department.
>
> 3. Completion certificate from CFO.
>
> 4. Valid GVK and AAI NOC.
>
> 5. Rain Water Harvesting Completion Certificate.
>
> 6. Drainage Completion Certificate.
>
> 7. Compliance of IOD Conditions before OCC."

26. As regards item 3 of the CFO, I have already dealt with this. The assessment department NOC will be issued upon payment by Mr Madon's client and Dr Saraf's client of the amount of Rs.

17,55,028/- as noted above. The other items, if not already submitted were to be re-submitted within two weeks from today.

27. Although there is an order of 13th April 2019 by which the MCGM confirms that the only requirements were the CFO compliance and NOC from the Assistant Deputy Fire Officer and Rain Water Harvesting Completion Certificate, I am now told that for the legendary "ease of doing business" (whatever that is supposed to mean) these documents are to be submitted all over again electronically. Mr Madon states that he will attempt to do so. If that system does not make the submission business easy enough, Mr Madon's clients will be entitled to submit them in hard copy and the MCGM will accept it in hard copy.

28. Mr Madon states that the pending compliances from the CFO should be addressed within two weeks from today. The fire resistant door will however take little longer as it needs to be specially fabricated.

29. After some arguments, Ms Singhania is permitted to withdraw Interim Application No. 1 of 2020. The Interim Application is disposed of as withdrawn. No order as to costs.

30. For the present, list the main matter on 21st February 2020.

(G. S. PATEL, J)