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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6823 of 2021

Savitta Homemakers LLP ...Petitioner

Versus

Maharashtra Housing Area Development Authority and Others ...Respondents

WITH
INTERIM APPLICATION (STAMP) NO.22680 OF 2021

Savitta Homemakers LLP ...Petitioner

versus

Maharashtra Housing Area Development Authority and Others ...Respondents

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Mr Mohit Bhansali, *with Mr Amit Mehta and Mr Akshay Jain for the Petitioner.*
Mr Sharmila Deshmukh, *for Respondent Nos 1 and 2 – MHADA*
Mr S S Panchpor, *AGP for the Respondent-State.*

CORAM G.S. Patel & Madhav J. Jamdar, JJ.
DATED: 26th November 2021

PC:-

1. Heard.

2. The Petitioner is the Developer. In this Petition under Article 226 of the Constitution of India, it seeks a writ of mandamus to set aside an advertisement issued by Respondent Nos 1 and 2 on 24th August 2021 at Exhibit-K to the Petition. By that advertisement, Respondent Nos 1 and 2 have invited applications for allotment of residential tenements in the structure reserved for EWS/LIG (Economical Weaker Section/Lower Income Group) on part of the land originally leased to the Petitioner, and which was, by law, required to be surrendered for this purpose.

3. The Petitioner proposed the development of a residential and commercial project on Plot No 7, Sector 11, Ghansoli, Navi Mumbai. The plot is nearly 12,500 sq. mtrs. in area. At the relevant time, as long ago as 2012, the CIDCO was the Planning Authority for the region. On 16th January 2012, it invited offers for the acquisition by lease of six residential/commercial plots at Ghansoli. The Petitioner put in a tender for those plots and paid Rs 3.25 crores as an earnest money deposit. CIDCO accepted the Petitioner's tender and allotted the plot to the Petitioner by a letter dated 20th March 2012 indicating its intention to create a lease in favour of the Petitioner. The Petitioner then paid a lease premium of approximately Rs 1.16 crores plus other amounts towards miscellaneous charges. The Petitioner then applied for sanction of construction and development plans including permission from the Airports Authority of India. A registered agreement to lease came to be executed between CIDCO and the Petitioner on 12th June 2012. The Petitioner paid stamp duty. It appointed an architect. That architect submitted a proposal for development permissions and for a commencement certificate. The then prevalent development control regulations required various permissions to be obtained. There is some discussion in the Petition about the Petitioner having obtained deemed permission because the Town Planning Officer did not respond within the statutorily mandated period of 60 days. Amongst other things, the Petitioner needed consent to operate from the Civil Aviation department. On 8th November 2013, the State Government, Urban Development Department, issued a notification introducing an inclusive housing scheme in the Development Control Regulations. This applied to the command area of those corporations with a population of 1 million or more as per last census but excluding the Municipal Corporation of Greater Mumbai. This is referred to the EWS regulation. It was duly published and notified. The inclusive housing scheme is applicable to private plots admeasuring 4000 sq. mtrs. or more which are for residential purposes. The scheme set out the manner of implementation and, amongst other things, said that at least 20% of the net plot area was to be provided either in the form of developed plots of 32 to 50 mtrs size for EWS/LIG or 20% of the net plot area was to be provided for construction of such tenements and this area was to be handed over to MHADA at prescribed rates. There was also an option of providing equivalent FSI in lieu of cash compensation. For plots more than 4000 sq. mtrs. in size, the developer was bound to construct tenements ranging from 30 to 50 sq. mtrs. as affordable housing to at least the extent of 20% of the basic zonal FSI. This was subject to some conditions. The Developer was allowed to utilise 1/4th of the total 20% earmarked area towards construction of affordable housing.

4. The Petitioner filed Writ Petition No 11270 of 2014 challenging this notification. It contended that the notification did not apply to its leasehold plot. The Writ Petition was taken up along with other petitions. All were decided together and dismissed by an order and judgment dated 5th February 2015. The Petitioner filed a Review Petition 97 of 2015, which it ultimately withdrew. The result of this was that the notification applied to the Petitioner. Therefore, the Petitioner was bound by the requirement of providing EWS/LIG housing according to the scheme of notification. We are told that the Petitioner filed a Special Leave Petition to the Supreme Court against the order of the High Court. Leave was granted on 18th January 2016 and the SLP is pending final hearing.

5. Then, allegedly on a without prejudice basis, the Petitioner sought sanction to a plan or to plans. By letters dated 22nd July 2015 and 13th August 2015 sanction was granted but the commencement certificate expressly had a condition specifying the reservation or requirement of providing affordable housing for EWS/LIG under the notification. Condition 5 of the commencement certificate obliged the Petitioner to surrender tenements constructed under the EWS scheme. There is no doubt that the Petitioner did in fact have to construct a building of EWS tenements. Condition 7 in the commencement certificate required the Petitioner to construct and obtain an occupation certificate for the EWS building.

6. The Petitioner did both. It constructed an EWS building and applied for and obtained an occupation certificate.

7. The Petitioner now says that this entire reservation of 20% and specifically the EWS building which has an occupation certificate should be demolished and land beneath it be returned to the Petitioner because the Respondent has neither purchased the EWS tenements nor made the allotment within six months of receiving intimation of the issuance or grant of the occupation certificate. This is the first ground of challenge. The submission in paragraph(s) at page 27 is that MHADA must be deemed to have given up or surrendered its right to the EWS/LIG housing.

8. The next ground is that on 2nd December 2020, a revised set of regulations known as UDCPR 2020 came into effect. In regulation 3.8.4, the UDCPR 2020 said that the provision for inclusive housing would not apply where plots were auctioned by the public authority without a condition of providing inclusive housing before the 2020 regulation came into force. However, for subsequent auctions, the condition of inclusive housing had to be specified and was mandatory. The submission before us is that the inclusive housing condition not having been specified at the time of the allotment cannot be made applicable to the Petitioner.

9. This argument is entirely misconceived. The allotment to the Petitioner was made in 2012 or 2013, while the first EWS notification was brought into effect on 8th November 2013 well after the allotment to the Petitioner. It would not have been possible for CIDCO to have included as a part of the auction condition a development control regulation provision, viz., the inclusive housing regulation, that had not yet come into existence. We are unable to see how the provisions of UDCPR 2020 and the so-called exemption under regulation 3.8.4 can possibly be made to apply to the present Petition. That exemption can have no application to the Petitioner at all.

10. These are only grounds on which the auction/lottery and allotment of EWS/LIG by MHADA are challenged before us. It is clear that the first challenge the governing notification has failed by an order and judgment of this Court. In view of subsequent events and the conduct of the Petitioner, and its specific actions, the admission of SLP cannot assist the Petitioner today. Indeed, the Petitioner has himself accepted the application of the condition. The EWS housing has been constructed. It has been handed over. An Occupation Certificate has been obtained. It is too late in the day now to contend that all this, after the admission of the SLP, should count for nothing or be inconsequential. Indeed, even the lottery has been conducted and 40 allottees have been identified. The formality of delivery of possession is all that remains.

11. Our attention is drawn by means of compilation to a 2018 modification to the regulation of inclusive housing. We have considered this modification. The amendment seems to indicate that MHADA must within six months of receipt of intimation of commencement certificate follow the lottery system procedure. But the failure of MHADA to follow the procedure cannot possibly result in a complete effacing of the EWS/LIG requirement. It can confer no additional right on the Petitioner.

12. We note from the same compilation that on 7th September 2016 MHADA demanded the 20% reservation from the Petitioner. On 17th July 2018 the Petitioner replied to MHADA submitting that the LIG building would be complete with its occupation certificate and compliances before 31st December 2018 and asking that the lottery process be taken up and a list of beneficiaries be forwarded.

Notably, this letter of 17th July 2018 is after the proposed amendment to the inclusive housing notification which is of 27th February 2018. We find no protest by the Petitioner in its letter of 17th July 2018.

13. It is immediately apparent to us that the Petitioner accepted or must be deemed to have accepted EWS/LIG condition imposed on its project. The challenge to the notification having failed and all having acted thereafter on the notification and its requirement, we do not see how it is possible today to permit the Petitioner to reverse the entire process and get back vacant land. We must be mindful of the fact that the MHADA EWS/LIG 20% requirement is manifestly in the public interest as a measure to provide affordable housing to specifically identified groups i.e. those from economically weaker sections or lower income groups. We decline the Petitioner's invitation to order a surrender of the land by MHADA to the Petitioner, for this is nothing but an attempt to subjugate these public interests and concerns to the purely private profit motives of a developer. That is indeed all that the Petitioner wants. Such an application is inherently inequitable and against the public interest.

14. We have no hesitation in rejecting the Petition.

15. Nobody before us has argued that the Petitioner has lost or surrendered its right to compensation. We are not called upon to decide that aspect of the matter.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**