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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2518 OF 2021

Sheetalsagar Builders & Developers Pvt Ltd ...Petitioner
Versus
The Chief Engineer-II Authority & Ors ...Respondents

Dr Milind Sathe, Senior Advocate, with Mr V S Kapse, Ms Freddy Bhadha, Ms Anushka Goyal i/b V S Kapse, for the Petitioner
Mr Kamlesh Ghamre, for Respondent No.2 – MHADA
Mr. Hemant Ingle, i/b Tushar Khandane, for Respondent No.3.
Mr P G Karande, with Ajit S Hodage with Sudam Patil and Praful Pawar, for Respondent No.4
Mr GB Walawalkar, for Respondent No.5

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 24th November 2021

PC:-

1. We note the statement made by the Petitioner – Developer that it is prepared to provide an alternate location to the Buddha Vihar for the 3rd Respondent, the Nalanda Buddha Vihar Sangh. We also note the statement made on behalf of the 3rd Respondent that it will shift to the new location, once it is ready.

2. To ensure that there is no misunderstanding, we required a joint affidavit to be made by the representative of the Petitioner and by a representative of the 3rd Respondent. On behalf of the 3rd Respondent, its President Mr Arvind Gade has affirmed this affidavit before our Associate. On behalf of the Petitioner, its Director Mr Abhay Mutha has affirmed this affidavit. The affidavit is taken on record.

3. It requires that the impugned order of 24th August 2021 passed by the Chief Engineer-II of the 2nd Respondent MHADA, which held in abeyance the IOA dated 11th May 2021 will need to be revoked or rescinded. We agree. So ordered.

4. The Commencement Certificate that is required by the Petitioner will then need to be issued or re-issued. We direct that the C.C. is to be issued within one week from today by MHADA.

5. The Affidavit then says that the Petitioner will be entitled to clear the site of the proposed construction of the Ambedkar Smarak Buddha Vihar including by demolishing the small Devdi. For this purpose, the police at Dadar police station will render necessary assistance.

6. The Affidavit says that the Petitioner will complete the proposed construction within four weeks from receipt of commencement certificate and that the Petitioner will obtain an Occupation Certificate. We read this to mean that the Petitioner will apply for an Occupation Certificate and we direct that the

Occupation Certificate application to be processed expeditiously and in any event within four weeks. Once the Occupation Certificate is received, the Petitioner will communicate this to the 3rd Respondent. The undertaking on Affidavit by the 3rd Respondent to vacate the existing structure and to shift to the new structure within a week of that communication is also stated on Affidavit. Obviously, the Petitioner will then be entitled to demolish the old structure of the Buddha Vihar.

7. We accept all undertakings as undertakings to the Court.

8. The 5th Respondent, the Nav Gujarat Mitra Mandal claims separate rights in regard to the Devdi. Dr Sathe, learned Senior Counsel on behalf of the Petitioner, states that this has been installed only a few months ago. There is already an agreement with the society which requires the Developer to provide a temple. We make it clear that the Developer is bound by that term. There is no question of providing separate place for the Devdi. It is incorporated in the commitment of the Petitioner-Developer to provide a temple to the 4th Respondent, the Co-operative Housing Society in question.

9. The Petitioner has already applied to MHADA for separate IOA for the temple. MHADA is directed to process this application expeditiously and within four weeks from today and in any event by 23rd December 2021. The commencement certificate and IOA are to be issued by that date. The Home Department and police will also be required to give permission by 23rd December 2021. The

Petitioner will make the necessary applications to all concerned well in time. We expect the temple to be constructed and ready within six weeks of issuance of the relevant commencement certificate. We note this as undertaking to the court as well.

10. The Petitioner will, if necessary, be required to apply for occupation certificate for the temple separately and this application has to be done within three weeks of the construction of the temple being completed. It is made clear that those who wish to use the temple may do so even while occupation certificate is awaited. However, they will do so at their own risk and will not raise grievance in that regard.

11. At this stage, no further directions are required in the Petition. The Petition is disposed of in these terms.

12. Liberty to the parties to apply should the need arise.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)