

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.1277 OF 2023

IN

WRIT PETITION NO.840 OF 2016

Union Industries ... Applicant

V/s.

The Controller of Rationing and Director
Civil Supplies, Mumbai and Anr ... Respondents

Mr. Uday Warunjikar with Mr. K.G. Mhatre i/b Mhatre
& Associates for the applicant.

Mr. A.R. Patil, APP for the State.

Mr. Vinod Gursale, Asst. Controller of Rationing, H.O.
Churchgate.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2023

P.C.:

1. The applicant has filed this application seeking modification of order dated 30th March 2016 allowing applicant to secure price of edible oil seized by respondent No.1 in exercise of powers under the Essential Commodities Act 1955.

2. The applicant challenged the action of officers under the said act by way of appeal before the Sessions Judge. During pendency of the appeal, the applicant applied for permission to sell the edible oil on the ground that oil is perishable. By order dated 8th April 2015, the learned Sessions Judge permitted the applicant to sell edible oil worth Rs.16,53,18,150/-, subject to furnishing equivalent bank guarantee of nationalized bank. Accordingly, the applicant furnished the bank guarantee.

3. After dismissal of the appeal by the Sessions Judge, the applicant filed writ petition before this Court. This Court while admitting the petition directed the applicant to furnish bank guarantee in similar terms. The said order is the subject matter of present application. In the application, the applicant has shown readiness and willingness to substitute bank guarantee by immovable properties belonging to the sister concerned. The report of government register is produced on record to indicate that the value of property prayed to be substituted for the bank guarantee is Rs.19,37,50,000/-. Additionally, residential Flat C-3 situated at Amarchand Mansion Co-operative Housing Society Limited at 16, Madame Cama Road, Colaba, Mumbai-400001 of sister concern as referred in paragraph 10 is sought to be substituted for bank guarantee. With the result, the applicant intends to substitute (i) the plot of land at Kharwar; and (ii) the residential flat C-3 at Colaba.

4. Considering the nature of proceeding pending before this Court, in my opinion, the rights of prosecution would be protected if the petitioner is allowed to substitute security of bank guarantee by security by deposit of title deeds of property at Karwar and Flat at Colaba. As per the valuation report, value of property at Karwar is Rs.7,08,75,000/-, value of property at Colaba is around Rs.19,37,50,000/- and value of edible oil sold was Rs.16,53,18,150/-. Hence, following order.

5. The order dated 30th March, 2016 is modified to the extent that instead of bank guarantee, the petitioner shall deposit original title documents of property bearing survey Nos. 1689, 1686, 1623,

1622, 1660, 1659, 1658, 1654, 1651, 1625, Hissa :-1,2,3,5 at Majali Sawanthwada Taluka Karwar and Flat C/3 situated at Amerchand Mansion Co-operative Housing Society at 16, Madame Cama Road, Colaba, Mumbai-400001 *shall be filed with the Registrar, Sessions Court, Mumbai.*

6. All partners of the applicant shall file individual undertaking before this Court stating that in case Writ Petition No.840 of 2016 is decided against the petitioners, they will reimburse the amount of Rs.16,53,18,150/- to respondent No.1 subject to final order passed by this Court while deciding the petition finally.

7. The Partners of sister concern shall also file undertaking before this Court stating that till the decision of Writ Petition No.840 of 2016 the said company shall not claim any right against respondent No.1 for either sale or creating third party rights, or shall not seek return of title deeds, or share certificate of the flat. Such undertaking shall be filed in this Court within a period of three weeks from today.

8. On filing of such undertaking before this Court, the bank guarantee furnished before the Sessions Court shall be returned to the petitioner within a period of three weeks from the date of filing of such application.

9. The Interim Application stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)

Note :- This order is modified as per order dated 6th June, 2023. The corrections in the paragraph 5 are shown in italicize)