

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

WRIT PETITION NO.1973 OF 2023

Hiranandani Properties Pvt. Ltd., Thane	] .. Petitioner
Vs.	
1. Municipal Corporation for the City of Thane	]
2. Assistant Director of Town Planning,	]
Municipal Corporation for the City of Thane	]
3. Office of the Court Receiver, High Court, Bombay	] .. Respondents

Mr. Shardul Singh, with Ms. Prerna Gandhi, for the Petitioner.

Mr. Mandar Limaye for Respondent Nos.1 and 2–Municipal Corporation.

**CORAM : A.S. CHANDURKAR &
M.W. CHANDWANI, JJ**

DATE : 16TH FEBRUARY, 2023.

ORAL JUDGMENT : [Per A.S. Chandurkar, J.]

1. Considering the short issue involved, the Writ Petition is taken up for final disposal by issuing Rule and making it returnable forthwith.

2. It is the case of the petitioner that a Company incorporated under the Companies Act, 1956 by the name “M/s. W.G. Forge & Allied Industries Ltd.” was ordered to be wound-up by the order dated 21st June 1985. Pursuant thereto, the Liquidator conducted an auction for sale of its properties. The proceedings reached this Court in Appeal No.617 of 2002, wherein the Court Receiver came to be appointed. On 25th September 2022, the Court Receiver

issued Particulars and Terms and Conditions for sale of all the properties of the Company that was wound-up. On 11th December 2002, the highest bid came to be accepted of M/s. Anand Agarwal & Associates. The petitioner was appointed as nominee of the highest bidder and the sale was confirmed in the name of the petitioner. Thereafter, an order under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976, (*for short, "Act of 1976"*), came to be passed on 15th January 2003. In those proceedings, Gat No.56/6 was shown to be admeasuring 15,480 sq.ft. A survey carried out by the Taluka Inspector of Land Records of the properties of the erstwhile Company, which indicated existence of Gat No.56/6. The petitioner claims interest in various properties including Gat No.56/6. It has constructed about twenty-three buildings and when it approached the Municipal Corporation for issuance of an Occupation Certificate for the last building, the petitioner was asked to submit a correction letter from the Court Receiver describing Gat No.56/14 as Gat No.56/6. The same is reflected as Condition No.16 in the Commencement Certificate dated 25th January 2018 for the reason that the Possession Receipt refers to Gat No.56/14 instead of Gat No.56/6. The petitioner has thus challenged the said condition and seeks issuance of an Occupation Certificate in the light of the fact that the property has been wrongly described in the documents submitted by the Court Receiver as Gat No.56/14 instead of Gat No.56/6.

3. We have heard the learned counsel for the parties and we have perused the relevant documents including the Particulars and Terms and Conditions of sale by the Court Receiver in Miscellaneous Petition No.475 of 1984. We have

also perused the order passed under Section 8(4) of the Act of 1976, wherein the subject property is shown as Gat No.56/6, admeasuring 15,480 sq.mtrs. The document further indicates that Gat No.56/6 had been purchased by the erstwhile Company on 31st July 1975 from Smt. Kaushalyadevi Teckchand Varma and others. The plan prepared by the Taluka Inspector of Land Records also indicates presence of Gat No.56/6 and does not indicate Gat No.56/14 as belonging to the Company.

4. In the affidavit-in-reply dated 1st February 2023 filed on behalf of the respondent-Municipal Corporation, it has been stated that, by way of abundant precaution, Condition No.16 has been imposed to ensure that if, in future, any claim is made for Gat No.56/14 or Gat No.56/6, it should not be put to a loss. In the affidavit-in-rejoinder filed by the petitioner on 15th February 2023, it has been stated in paragraph 6 as under :-

“6. Without prejudice to the aforesaid, to address the apprehension of the respondent-Corporation, petitioner undertakes to submit a declaration, undertaking or indemnity in favour of the respondent-Corporation to indemnify and keep indemnified the Corporation from all or any claims made against it by any third party with respect to Gat No.56/6(Pt.) or 56/14.”

5. In the light of the aforesaid, we find that the order passed by the Competent Authority under Section 8(4) of the Act of 1976 clearly refers to Gat No.56/6. Similarly, the Particulars of the Properties, as prepared by the Receiver, also indicate the same Gat number. The Municipal Corporation is justified in

imposing Condition No.16 in the Commencement Certificate dated 25th January 2018 in view of the Possession Receipt dated 15th March 2003 in Appeal No.617 of 2002. At the same time, since the petitioner is willing to indemnify the Municipal Corporation from any claim made against it by any third party in respect of Gat No.56/6 or 56/14, we find that the petitioner can be called upon to furnish such Indemnity Bond with the Municipal Corporation so as to safeguard the interest of the Municipal Corporation.

6. Accordingly, on the petitioner furnishing an Indemnity Bond with the Municipal Corporation in terms of what has been stated in paragraph 6 of its affidavit-in-rejoinder dated 15th February 2023, which is reproduced here-in-above, the respondent nos.1 and 2-Municipal Corporation, subject to compliance with Condition Nos.1 to 15 in the Commencement Certificate dated 25th January 2018, shall issue the necessary Occupation Certificate in accordance with law within a period of four weeks of such compliance.

7. With these directions, the Writ Petition is allowed in the aforesaid terms. Rule accordingly.

[M.W. CHANDWANI, J.]

[A.S. CHANDURKAR, J.]