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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

VASANT
ANANDRAO
IDHOL

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INTERIM APPLICATION NO.300 OF 2022
IN
WRIT PETITION NO.175 OF 2021

Farid Ahmed Abdul Gaffar Ansari & Anr. ...Applicants
V/s.
Ufasa Realtors Pvt. Ltd. & Ors. ...Respondents

WITH
WRIT PETITION NO.3156 OF 2019

Farid Ahmed Abdul Gaffar Ansari & Anr. ...Applicants
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.Shishir Joshi with Mr.Chetan Mhatre i/b Ms.Priti Joshi for the Applicants.

Mr.Cyrus Ardeshir i/b Mr.Raniz Shaikh for the Petitioner in WP No. 175 of 2021.

Ms.Gargi Warunjikar with Ms.Amita kamble i/b Ms.Kshitija Wadatkar for the Respondent Nos.1 and 2.

Mr.Himanshu Takke, AGP for the State – Respondent No.1 in WP.

Mr.Aseem Naphade i/b Mr.Jitendra R. Khirsagar for the Respondent Nos.4, 14 to 27, 29 to 37, 39, 41 to 56, 58 to 67, 69, 71 to 73 and 74.

Mr.Rashmin Khandekar with Mr.Asadali Mazgaonwala and Ms.Tanvi Shah for the Respondent Nos.5 to 13.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.
DATE : 1ST MARCH, 2023.

P.C. :-

1. By this Interim Application, the Applicants seek recall of the order dated 8th January, 2021 passed by this Court and seek restoration of the Writ Petition to file. The Applicants also seek dismissal of the Writ Petition (Lodging) No.9393 of 2020 on the ground that there was gross suppression and misrepresentation of facts and law as well as fraud played upon this Court by the original Petitioners.

2. The original Petitioners claim to be the occupants of two tenements which are already vacated in the year 2010 along with all tenants in the building owned by the original owners. The original Petitioners filed Writ Petition No.2143 of 2018 and Writ Petition No.386 of 2018 in this Court for various reliefs. By judgment dated 14th March, 2019 passed by the Division Bench of this Court, this Court directed the developers to deposit a sum of Rs.50 crores with the Mumbai Board and provided for consequences in case of default, if committed by those Respondents. In paragraph 25(c) of the said order, it was provided that if those Respondents fail to show their *bona-fides* and deposit the amount as directed, the Mumbai Board shall pass appropriate orders in accordance with law in furtherance of their warning notice and final show cause notice, including cancellation or withdrawal of the no objection certificate already

issued.

3. In paragraph 25(d) of the said order, it was provided that after such steps are taken, the second and third Respondents shall, in terms of the power conferred by Chapter VIII of the Maharashtra Housing and Area Development Act, 1976, take such steps as are permissible therein, including initiation of proceedings for acquiring the property and thereafter taking such further measures as are permissible in law, to cause early rehabilitation of those occupants.

4. It was further provided in the said order that in the event of the proposals received for such acquisition and rehabilitation and they are being considered or steps are taken to acquire the property, it is the Mumbai Board and MHADA, who shall ensure that till such time the final decision is taken on such proposals and the actual rehabilitation of those tenants, a sum shall be periodically released in favour of every occupant / tenant so that they can meet the cost of arranging an alternate accommodation or bear the expenses thereof to some extent.

5. It is common ground that the developers committed default in depositing the amount as directed by this Court in the said order. The original Petitioners, who were the Petitioners in the said Writ Petition, did not apply for acquisition of the property in compliance with the order passed by this Court on 14th March, 2019. The

Applicants however, have chosen to file a separate Writ Petition in this Court *inter-alia* praying for a writ of mandamus against the Authorities to comply with the decision taken on 25th April, 2019 and to acquire the writ property and to start re-construction / redevelopment of the building to rehabilitate all the occupants and to provide for transit accommodation / transit amount from 25th April, 2019 till rehabilitation. It is not in dispute that the original Petitioners filed the Petition for a writ of mandamus against the Authority to acquire the writ property is still pending since four years. No efforts are taken to apply for hearing.

6. In the mean time while the second developer, who had applied for No Objection Certificate of MHADA and for waiver of conditions of deposit made by this Court in the writ Petition filed by the Applicants, MHADA instructed the second developer i.e. Ufasa Realtors Private Limited to apply for clarification from this Court. Ufasa Realtors Private Limited therefore filed the Writ Petition in this Court bearing Writ Petition No.175 of 2021 *inter-alia* praying for a writ of certiorari for quashing and setting aside the letter dated 29th October, 2020 addressed to Ufasa Realtors Private Limited by the Respondent No.2 and for various other reliefs.

7. This Court passed an order in the said Writ Petition on 8th January, 2021 and after recording the detailed reasons and after

taking cognizance of the order dated 14th March, 2019 passed by this Court and observing that the second developer is appointed under a fresh Development Agreement after the first developer failed to comply with the directions of this Court, the landlords terminated the agreement with the first developer and the Special Leave Petition having been dismissed by the Supreme Court, directed MHADA to process the application filed by the Petitioners without insisting that the Petitioners should comply with the directions given in the order dated 14th March, 2019.

8. In compliance with the said order passed by this Court, MHADA granted various No Objection Certificates. Various other permissions are granted on the terms and conditions in favour of the Petitioners. The Petitioners have already commenced the construction of the building under acquisition and has already carried out construction upto 3rd floors. He further states on instructions that the Petitioners have been paying transit amount to all the occupants, who are occupying earlier prior to the demolition and have also agreed to pay the transit rent payable to the Applicants. It is the case of the Petitioners that the Applicants however, failed to accept the transit rent.

9. Learned counsel further states on instructions that the Petitioners does not dispute entitlement of the Applicants to get

accommodation in the new building. The Petitioners are ready and willing to enter into an agreement with the Respondent Nos.5 to 13 in that regard on the same terms and conditions on which the Applicants have already entered into the agreement with other occupants.

10. In view of the fact that the Applicants did not apply for acquisition of the property, though the first developer had already committed default and did not pursue the Petition for a writ of mandamus against the Authorities to acquire the property, the Petitioners have proceeded further and have already started construction, to the knowledge of the Applicants for last several years. In our view, there is no error apparent on the face of record in the orders sought to be reviewed by the Applicants.

10. The Interim Application is thoroughly misconceived and is accordingly dismissed. No order as to costs.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)