

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1348 OF 2023**

SD SVP Nagar Redevelopment Pvt Ltd	...Petitioner
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr Mayur Khandeparkar, *with Aryan Srivastava & Sahil Singh, i/b Wadia Ghandy & Co, for the Petitioner.*
Mr Abhay L Patki, *Addl GP, for Respondent No.1-State.*
Mr PG Lad, *with Shreya Shah, for Respondent No.3-MHADA.*
Mr Sagar Patil, *for the MCGM.*

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 26th April 2023

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1. We made an order in a previous Petition brought by these Petitioners, Writ Petition (L) No. 1163 of 2023. A copy of that order is from page 40 onwards. Paragraphs 6 to 9 of that order read thus:

“6. The developer tried to get approval but could not proceed. The land was affected by CRZ-II Regulations. On 6th November 2020, the 1st Petitioner wrote to MHADA saying that it could not obtain the approvals required and could not proceed

with the redevelopment. The 1st Petitioner had not acted upon the MHADA NOC at all. Consequently, the 1st Petitioner asked for a refund of the premia that it had paid. On 6th November 2020, the Society also wrote to MHADA saying that the Society did not object to the amount being refunded to the 1st Petitioner. On the 1st Petitioner's request, MHADA cancelled its redevelopment NOC by a letter of 30th March 2021. It also confirmed the amount to be refunded to the 1st Petitioner. A copy of this letter is at Exhibit "H".

7. In April 2021, MHADA refunded a sum of Rs.2,38,24,764.00 by RTGS. This is also not disputed. The online payment details are at Exhibit "I". On 3rd May 2021, the 1st Petitioner asked the 2nd Respondent, the MCGM to refund a part of the payment because as the table at paragraph 3.8 shows, some of the total expenditure made by the 1st Petitioner was to the MCGM. The MCGM acknowledged receipt but did not reply. Therefore the 1st Petitioner wrote to MHADA on 13th February 2021, asking it to direct the MCGM to refund the amount of Rs.2,42,35,076.00. Of course, this was accompanied by a more than somewhat ambitious demand for 9% compound interest, but we will let that pass.

8. On 18th May 2021, the 1st Petitioner requested MHADA for a refund (again making a demand for compound interest). Paragraph 3.19 is interesting. The Petitioners filed an RTI query and that revealed certain internal correspondence between MHADA, MCGM and the State Government. It seems that a certain amount has been transferred to the “Maharashtra Nivara Nidhi”. The funds were locked up with this Nidhi. They had to be routed back to MHADA for it to make a refund to the 1st Petitioner.

9. The Petition, therefore, presents a simple point. The amount required by MHADA under its offer letter was for its NOC for redevelopment. That redevelopment never happened. It was found not to be possible because of the CRZ-II Regulations. MHADA was informed of this. MHADA cancelled its NOC. It is impossible to accept that either MHADA or MCGM could retain any part of the payment. That payment was made only to obtain the NOC. If the payment is not against some dues that have already been incurred, the payment is a fee or a premium that is by its nature refundable. If the development does not happen and the NOC itself for redevelopment stands cancelled, then there is clearly a complete failure of consideration and there is no possibility of either MHADA or the MCGM retaining any part of the amount.”

2. That order was in respect of another society. The present Petition is on an identical basis and the same order will have to be made as well. Mr Lad for MHADA states that the NOC of the society does not say that the refund has to be paid to the Petitioners although it accepts at page 93 that the refund is to be made.

3. This is no reason to hold up the issuance of the refund. It is self-evident that the refund has to be paid to the Petitioners who are the paying party. Mr Khandeparkar points out that from the amount refunded and claimed in the Petition at 3.21, an amount of lease rent of Rs. 17,76,542/- cannot be refunded. The Refund amount will be reduced by that much. The amount is to be refunded within a period of six weeks from today.

4. The Writ Petition is disposed of in these terms and Rule is made absolute in terms of prayer clauses (a) and (b) which read thus:

“(a) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature thereof directing Respondent No.2 to refund the amount of Rs.74,47,276/- (Rupees Seventy-Four Lakh Forty-Seven Thousand Two Hundred Seventy Six only) along with the interest at the rate of 9% per annum thereon within a period of 2(two) weeks from the date hereof or within such time this Hon’ble Court deems fit;

(b) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature thereof directing Respondent No.3 to refund the amount of Rs.2,75,55,405/- Rupees Two Crore Seventy Five Lakh Fifty Five Thousand Four Hundred

Five only within a period of 2(two) weeks from the date hereof or within such time this Hon'ble Court deems fit.”

(Neela Gokhale, J)

(G. S. Patel, J)