

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1751 OF 2021**

Sudhir Chandrakant Anandpara
Versus
Maharashtra Housing and Area
Development Authority & Anr

...Petitioner
...Respondents

Mr Vishal Kanade, with Rajesh Talekar, Rahul Pujari & Rakesh Misar, i/b Rajesh Talekar, for the Petitioner.
Mr PG Lad, with Sayli Apte & Shreya Shah, for Respondent No. 1-
MHADA.
Mrs Uma Palsuledesai, AGP, for Respondent No. 2-State.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 9th November 2023

PC:-

1. There is a revised calculation of the penalty amount. This has been discussed in Court. Only two factors need to be noted. The first is that on 25th November 2011, the Petitioner deposited a cheque of Rs 81,87,620/- with Maharashtra Housing & Area Development Authority (“MHADA”). There is also correspondence before us to show that the Petitioners had earlier agreed to surrender the additional area by the letter of 27th September 2001. Possession of this area was formally taken on 31st July 2020. The penalty is calculated periodically on a certain

specified amount per square foot. We hold that MHADA cannot possibly hold on to the deposit of Rs 81,87,610/- and not give credit for the amount and reasonable interest on it. We specified interest at 7.5% per annum and reject the submission that it was paid in fulfilment of a bail condition.

2. This would have an effect on the computation of the penalty as well which would therefore run in phases from 2002 to 2011, when the deposit was made. The penalty amount is computed at Rs 26,50,171.86/-. The interest on Rs 81,87,610/- is computed as Rs 73,68,849/- and the total credit allowed is therefore, Rs 1,55,56,459/-.

3. Finally, there is a Repair Board demand as per a resolution of 11th March 2022 approved by the Government on 27th June 2022. This demand and the penalty work out in the aggregate amount to Rs 2,04,70,007.96/-. Squaring these amounts, i.e., Rs 2,04,70,007.96/- less Rs 1,55,56,459/-, leaves a balance payable by the Petitioner to the Repair Board of Rs 49,13,548.96/-.

4. Mr Kanade states that the Petitioner will make payment of this amount but requires some indulgence in time to make the payment. He submits that the payment will be made either in instalments or full within 90 days from today. That is reasonable and we accept that statement.

5. In view of this, the notice of the Tehsildar for recovery of the amount is held in abeyance for the period of 90 days. If the amount

is not paid, the notice may proceed for the unpaid amount if any. If the amount is paid, then the Tehsildar's notice will automatically stand quashed and set aside.

6. On payment of the full amount, there will be an order on the Writ Petition in terms of prayer clause (a) at page 33 which read thus:

“(a) this Hon’ble Court be pleased to issue writ of mandamus and/or any other writ, order or direction in the nature of mandamus and thereby be pleased to direct the Respondent herein to issue its No Objection Certificate to the Petitioners to enable the Petitioner to obtain full Occupation Certificate in respect of the said Project from the Municipal Corporation of Greater Mumbai.”

7. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)