

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

WRIT PETITION NO. 3097 OF 2019

Export Import Bank of India	...	Petitioner
Versus		
Mumbai Municipal Corporation & Ors.	...	Respondents

Mr. Huzefa Nasikwala a/w Ganesh Narkhede i/by Nasikwala Law Office for the Petitioner.

Ms. Sutapa Saha for the Respondent No.3.

Mr. Rakesh Sinah a/w Heena Shaikh i/by M. V. Kini & Co. for the Respondent No.4-BEST.

Mr. Yashodeep Deshmukh a/w Pooja Yadav i/by Sunil K. Sonawane for the Respondent-MCGM.

Mr. Abhay Patki, Addl. G. P., for the Respondent No.1-State.

**CORAM: SUNIL B. SHUKRE &
R. N. LADDHA, JJ.**

DATE : 14th JUNE, 2023

PC. :-

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. Learned counsel for the petitioner states, on instructions, that he would not press prayer clauses (a) and (b) and considering the same, we dismiss the petition as regard to prayers (a) and (b).

4. Now, the only surviving prayer is the one which is stated in prayer clause (c). By prayer clause (c), the petitioner seeks a direction

to respondent no.2-Executive Engineer of the Mumbai Municipal Corporation to certify the petitioner's name, occupation, area of the property in possession of the petitioner and floors in possession of the petitioner before demolition of the property. In other words, the petitioner is desirous of certification by the Corporation of the entire area of the property in question which has been mortgaged to the petitioner by respondent no.3 as security for repayment of the loan taken by respondent no.3, which property now has been taken in possession in terms of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') for the purpose of enforcement of security by the petitioner.

5. The contention of the petitioner is that the area of the property mortgaged to him and which is now taken in possession by him is much larger than the area actually certified by the Corporation and that there is certain deficit area in respect of which, the Corporation has refused to issue a certificate of the petitioner being in possession of that remaining area of the property.

6. Learned counsel for the petitioner submits that the Corporation is under a duty to take into consideration the entire area of the property mortgaged to the petitioner and it cannot go by the approved plan of the year 2010. Whereas, learned counsel for the Corporation submits that the area of the property to be developed must be in conformity with the area of the construction which has been stated in the sanctioned plan and if the area of the construction is found to be in excess of the area in respect of which the plan has been approved,

the owner or the occupier of the property would have to place on record the approved plan for the additional area constructed in that property and if it fails to do so, it will not be possible for the Corporation to issue a certificate in respect of that additional area.

7. There can be no denying the fact that one cannot develop the property unless there is a sanctioned plan and if there is a sanctioned plan, one cannot develop the property having area in excess of the area permitted under the sanctioned plan. So, it is only the sanctioned plan which would be a determinative factor for certification of the area in possession of the owner or the occupier. In fact, while certifying the area of the property, the Corporation has already mentioned that, in case, there is any latest approved plan of the building and the same is produced before the Corporation, it would consider the same in accordance with law and issue a modified certificate of the area in possession of the occupier.

8. Considering the willingness of the Corporation to allow the occupiers to produce appropriate documents to it in order to satisfy the Corporation regarding the owner or the occupier being in possession of higher area, we are of the view that purpose of this petition will stand served by giving such opportunity to the petitioner.

9. In view of above, partly allowing the petition, we direct the Corporation to reconsider the issue of certification of the area in possession of the petitioner in accordance with law and for this purpose, we grant liberty to the petitioner to produce all documents in his possession including latest approved plan of the building and the

order passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act to satisfy the Corporation about the petitioner having possession of an area which the petitioner states to be the area as shown in the mortgaged deed. The petitioner may submit his documents within six weeks from the date of the order. We direct the respondent nos. 1 and 2 to consider the documents submitted by the petitioner afresh in accordance with law and take appropriate decision regarding certification of the area in possession of the petitioner in terms of its guidelines for declaring private and municipal buildings as C-1 category, within four weeks from the date of the submission of the documents.

10. Rule is made absolute in the above terms. No costs.

[R. N. LADDHA, J.]

[SUNIL B. SUKHRE, J.]