

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

WRIT PETITION NO. 1951 OF 2019

Cello Infrastructure Ltd.

..Petitioner

Vs.

Securities And Exchange Board Of India And 4 Ors.

..Respondents

WITH

INTERIM APPLICATION (L) NO. 40552 OF 2022

IN

WRIT PETITION NO. 1951 OF 2019

Vasundhara Co-Op Housing Society Ltd.

..Applicant

In the matter between

Cello Infrastructure Ltd.

..Petitioner

Vs.

Securities And Exchange Board Of India And 4 Ors.

..Respondents

WITH

INTERIM APPLICATION NO. 32824 OF 2022

WITH

INTERIM APPLICATION (L) NO. 32676 OF 2022

IN

WRIT PETITION NO. 1951 OF 2019

Darshana Umesh Doshi & Anr.

..Applicants

In the matter between

Cello Infrastructure Ltd.

..Petitioner

Vs.

Securities And Exchange Board Of India And 4 Ors.

..Respondents

Ms. Prajakta Jagtap i/b Ms. Radhika Samant, for the Petitioner.

Mr. T. R. Yadav a/w Mr. A. K. Saxena for Applicant in IA No.32824 of 2022 & IAL No.32676 of 2022.

Mr. Kailash Dubey for Applicant in IAL No.40552 of 2022.

Mr. Dhaval A. Patil i/b K. Ashar & Co., for Respondent No.1 (SEBI).

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : OCTOBER 17, 2023.

P.C.:

1. This petition under Article 226 of the Constitution of India, was filed on 06 September, 2018 praying for the following reliefs:

- a. that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or writ of certiorari or any other appropriate writ or order direction, calling for the records from the Respondent No.1 with respect to the E-auction notice dated 18.8.2018 at Exhibit-H and considering the MOU dated 16.11.2011, so also Registered Agreement to/for Sale dated 20.12.2011 and Conveyance dated 19.11.2014 between the Petitioners and Respondent No.2 & 4, this Hon'ble Court be pleased to hold that the Respondent No.1 through its Recovery officer & General Manager are bound under Article 254(2) of the Constitution of India, so also order dated 28.4.2015 passed in Misc. Application No.92 of 2015 in MPID Case No.1 of 2004 of the Hon'ble MPID Designated Court, so also precedents laid down by the Hon'ble Apex Court which affirms that Sec. 14 of the MPID Act gives overriding effect to the MPID Act over any other law for the time being in force, hence the Certificate NO.436 of 2014 issued by the Recovery Officer dated 22.11.2016 at Exhibit-G and the notice of sale for E-Auction of immovable properties in Times of India published on 10.8.2018 w.r.t. properties [*i.e. Flat No.302, 202, 101, 102, and 501 at B Wing, Vasundhara Enclave, Bengalee Compound, Gokuldhara, Goregaon (E), Mumbai-400 063*] which do not vest with Respondent No.4, issued by the Recovery Officer [*General Manager*] of SEBI be held to be bad in law, arbitrary, malafide, parochial, vitiated, unwarranted and the same be set aside and quashed;
- b. Pending the decision and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct the Respondent No.1 or their officials / agents to abstain from E-auctioning the flats viz. *Flat No.302, 202, 101, 102, and 501 at B Wing, Vasundhara Enclave, Bengalee Compound, Gokuldhara, Goregaon (E), Mumbai-400 063* as set out in the E-auction notice dated 10.8.2018 at Exhibit-H published in Times of India, in the interest of justice;
- c. Pending the decision and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct the Respondent No.1 to consider the detail representation dated 6.9.2018 at Exhibit-I made by the Petitioners to Respondent No.1, in accordance with law;
- d. interim and ad-interim reliefs in terms of prayer clause (b & c) above be granted;
- e. other and further reliefs as are deemed fit and proper in the nature and circumstances of the case be granted;

f. and the cost also be provided for.”

2. Thus, it can be seen that the only substantive relief as prayed for is in terms of prayers Clause-a.

3. We note that by an order dated 12 September 2018 passed by a coordinate Bench of this Court, an interim protection was granted to the petitioners to the effect that it was directed that the auction to be held on the said day be proceeded further, however, the respondents shall not take any decision with regard to finalization of the auction. The petition has remained pending since then.

4. Mr. Thorat, learned counsel for the SEBI, informs that in such E-auction, no bids were received and the matter has rested at such position since last almost five years. In fact, we note that the petition itself was dismissed on 26 March 2019 for non-removal of the office objections and on 16 July 2019, it was restored by this Court by an order passed on Notice of Motion No. 222 of 2019.

5. We have heard learned counsel for the parties, as also having perused the record, we are of the opinion that of the petition in regard to the prayers as made, need not proceed for adjudication any further, suffice it to observe, that in the event, the SEBI has any future plans to auction the property, a 14 days notice of such auction shall be issued to the petitioners, so as to enable the petitioners to assert any challenge to the

same, if the petitioners so desire. This for the reasons that the prayers are only in the context of E-auction notice dated 10 August 2018 (Exhibit-H). Ordered accordingly.

6. We may also observe that there is an intervention application as filed by Vasundhara Co-operative Housing Society Ltd., which states that under the registered sale deeds, rights are created in favour of the intervenors in respect of the flats in question. If that be so, the intervenors are free to assert their rights, if any, in regard to the said property in a manner known to law and / or in defending any action, if any resorted by the SEBI against the intervenors.

7. All contentions in that regard are also expressly kept open.

8. The petition accordingly stands disposed of in terms of the above observations. No costs.

9. The Interim Applications would also not require further adjudication and stand disposed of.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]