

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1041 OF 2024
IN
FIRST APPEAL NO. 1430 OF 2019**

M/s. Mira Real Estate Developers
known as M/s. Mira Salt Work Co. ...Applicant

IN THE MATTER BETWEEN :

Union of India Through
The Deputy Salt Commissioner ...Appellant

Versus

The Estate Investment Company Pvt. Ltd. ...Respondents

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Mr. Girish S. Godbole, Senior Advocate a/w Ms.Rujuta Patil, Mr.Yohaam Shah, Mr. Hasan M. i/by Negandhi Shah and Himayatullah, Advocate for the Applicant in I.A. 1041/2024 and Respondent No.2 in F.A. 1430 of 2019.

Mr. Ram Apte, Senior Advocate a/w Mr. Harshal Nahata i/by Anil D. Yadav for Respondent No.1 in Interim Application No.1041/2024 and Appellant in F.A. No.1430 of 2019.

Mr. A.R. Patil, A.G.P. for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 12th FEBRUARY, 2024.

P.C.:

1. The learned Senior Counsel Mr. Godbole for the applicant at the outset submitted that he is not pressing prayer clause (b) of this application and at this stage liberty to urge that prayer may be reserved.

2. The applicant is seeking modification of order dated 02.09.2021 passed by this Court in Interim Application (St.) No.97107 of 2020, Civil Application No.384 of 2019 and Writ Petition (St.) No. 11164 of 2021 and First Appeal No.1430 of 2019. Modification is sought to permit the Petitioner to participate in the tender process and in the event the applicant is declared successful bidder, liberty be granted to enter into Leave and License with MCGM for use as casting yard in respect of the land or part thereof, on the terms and conditions as may be finalized by MCGM.

3. The operative part of the order dated 02.09.2021 reads as follows:

“(i) In the occupancy column of the property card, the name of Mira Real Estate Developers (Petitioner in the above Writ Petition) will be shown. Necessary changes will be carried out within a period of four weeks from today.

(ii) Though the name of Mira Real Estate Developers will be entered in the occupancy column of the property card, the same shall be subject to the further orders passed by this Court in the First Appeal filed by the Union of India.

(iii) Mira Real Estate Developers, shall until further orders, maintain status quo as of today in respect of the subject land. However, in the event of Mira Real Estate Developers wanting the status quo to be changed in any manner whatsoever, they shall move this Court seeking necessary directions/reliefs, which shall be considered only after hearing the objections of the Union of India. ”

4. M/s. Mira Salt Works had filed application No. 4 of 1999 before the Collector, Thane for determination of title under Section 20(2) of the Maharashtra Land Revenue Code. Vide order dated 18.11.2002, the claim of applicant M/s. Mira Salt Work Co. for ownership of land which were mentioned in mutation entry No.941 dated 27.05.54 of Village Bhyander Tal. Thane was rejected. The claim of Dy. Salt Commissioner and Salt department of Union of India was also rejected. It was decided that the ownership of suit land vests in state of Maharashtra. Aggrieved by the order dated 18.11.2002 passed by the District Collector, the applicant filed RTS Appeal No.38 of 2003 before the Additional Commissioner, Konkan Division, Mumbai. The Appellant also challenged the said order by filing separate RTS Appeal No.97 of 2003 before the Additional Commissioner. Vide common order dated 08.10.2010, the Appeal No.97 of 2023 preferred by Appellant was dismissed and the Appeals preferred by the applicant and the Estate Investment Company were allowed and order dated 18.11.2002 passed by the Collector Thane was set aside. Names of applicant and the Estate Investment Co. Pvt. Ltd. were directed to be mutated in the respective record of rights of the suit lands and name of appellant was ordered to be deleted from the record of rights of said Lands. There was settlement between applicant and Estate Investment Co.

Pvt. Ltd. The Appellant also challenged order dated 05.09.2008 passed by Collector Thane deciding title of larger lands including Suit lands in favour of Estate Investment Co. Pvt. Ltd. The order dated 05.09.2008 was challenged in Writ Petitions before this Court. Orders were passed on 14.07.2011 and 11.10.2011. The Appellant filed Suit No.771 of 2011 before the Court of Civil Judge Senior Division, Thane under Section 20 of MLR Code for declaration of title and to set aside order dated 08.10.2010. The suit was dismissed on 13.04.2018. The order dismissing suit was challenged by the Original Appellant/Union of India by preferring First Appeal No.1430 of 2019 before this Court. Appeal was admitted by this Court vide order dated 9th July 2021. During pendency of First Appeal order dated 29.12.2020 was passed by Sub Divisional Officer, Thane and order dated 26.02.2021 was passed by SDO Thane. The applicant filed Writ Petition No.11164 of 2021. Both matters were heard together and order dated 02.09.2021 was passed. Writ Petition was disposed off. The applicant preferred Special Leave Petition against order of admission and status quo before Hon'ble Supreme Court which is pending.

5. Learned Senior Advocate for the Applicant submits that they are owners of suit land and right from the year 1983 when the

dispute arose for the first time while the appellant refused to renew the license, there was no injunction nor any prohibited orders passed by any authority. The suit filed by the original Appellant has been dismissed by the Court. The observations made while dismissing the suit indicate the rights of the applicant in respect to the suit land. The applicant intends to participate in the E-tender of MCGM as they are eligible and meet all the requirements of E-tender. If the applicant is declared as the successful bidder in the E-tender, they would be required to enter into Leave and License Agreement which does not create any interest in the land in favour of MCGM. This Court while passing order dated 02.09.2021 granted liberty to the parties to move the Court, in the event the necessity of changing the status quo order. The material/evidence on record which is part of various proceedings indicate that the ownership has always been of the applicant in regard to the land in question. The applicant has also challenged the order of status quo passed by this Court before the Apex Court. However, presently the applicant is seeking modification to the extent of seeking permission to participate in E-tender and if declared successful to execute Leave and License Agreement with MCGM. The observations made by the Civil Court while dismissing the Civil Suit filed by the Appellant confirms right of applicant. In the event the

modification as sought is granted, no prejudice will be caused to the Original Appellant.

6. Learned Senior Advocate Mr. Apte appearing for the Original Appellant-Union of India vehemently opposed the prayers for modification of order dated 02.09.2021. It is submitted that the order dated 02.09.2021 is under challenge before the Apex Court and Special Leave Petition initiated by the Applicant is pending at the instance of the applicant. The Applicant cannot seek the same relief before this Court when the proceedings are pending before the Apex Court. The findings of the Civil Court in the suit are under challenge in the appeal preferred by the Appellants. The Appeal has been admitted by this Court. Vide order dated 02.09.2021 status quo has been granted by this Court. The appellant has right in the suit land. The applicant has committed breach of the status quo order passed by this Court which is evident from the photographs annexed to the Appeal. The applicant is not eligible to participate in the E-tender. The subject land is a salt land. The tender conditions are not satisfied by the applicant. Mortgage was created in respect to property which would disqualify the applicant from participating in the E-tender. The revenue record relied upon by the applicant does not establish the title in the property. The litigation in respect to the subject

property is pending, in such circumstances during the pendency of the proceedings before this Court, the applicant cannot be permitted to create any right in respect to the property by participating E-tender and executing Leave and License Agreement in the event the applicants are declared successful bidder.

7. In rejoinder Mr. Godbole, the learned Senior Advocate appearing for the applicant drew our attention to the findings of the Court mentioned in Paragraph Nos. 24, 25 & 26 of the Judgment dated 13.04.2018 passed by Civil Judge Senior Division, Thane in Special Civil Suit No.771 of 2011 while dismissing the suit. The applicants are seeking permission to participate in the E-tender. If the applicants are qualified to participate, the MCGM will consider whether the applicant should be permitted to participate or not to participate.

8. We have perused the documents on record. The appeal is pending before this Court. The question which arises for consideration is whether the order dated 02.09.2021 passed by this Court in the nature of status quo can be modified for granting relief sought in this application. The applicants had approached the apex Court challenging the order dated 02.09.2021 and the Petition is pending. However, the limited relief sought in this application

seeking liberty to participate in E-tender and in the event they are declared successful bidder, liberty be granted to them to execute Leave and License Agreement with MCGM. It is pertinent to note that the end date and time for submission and uploading with commercial proposal, E-Packets is 15.02.2024 upto 17.00 hours. On perusal of order dated 02.09.2021 it is provided that in the event the applicant wanting the status quo to be changed in any manner whatsoever, they can move the Court seeking necessary directions/reliefs which shall be considered only after hearing objections of the Union of India. Thus this Court had granted liberty to the applicant to move this Court for seeking modification of the order dated 02.09.2021. Since the Appeal preferred by the Union of India is pending, we are not giving any findings in respect to the rights of the parties. However, considering the documents on record, order under challenge, the limited relief sought in this application, there is no impediment in granting the permission to applicant to participate in tender process and application. It is clarified that we are not deciding the eligibility of the applicant to participate in the E-tender which would be sole decision of the MCGM.

ORDER

- i.** Interim Application No.1041 of 2024 is allowed;

ii. In the light of order dated 02.09.2021 the applicant is permitted to participate in E-tender and in the event the applicant is declared successful bidder, the applicant will be at liberty to execute Leave and License Agreement with MCGM.

iii. This order is passed without prejudice to rights/claim of both the sides in respect to suit land.

iv. Prayer clause (b) is not pressed. Liberty as prayed is reserved.

v. Interim Application is disposed of.

9. At this stage the learned Senior Counsel for the Original Appellant prayed for stay of this order for a period of three weeks. Learned Senior Counsel for the applicant opposed the prayer.

10. Considering the nature of relief granted and also considering the fact that the last date for submitting E-tender is 15.02.2024, the prayer for stay of this order is rejected.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)