
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10952 OF 2023

M/s. Assets Realty through its Partners. ...Petitioner

Versus

The Tahasildar, Ambarnath & Anr. ...Respondents

Mr. Sushant Prabhune a/w. *Mamta Pandey, Advocates for
Petitioner.*

Mr. Kedar Dighe, Addl.G.P. a/w. *Ms. P.N. Diwan, AGP for
Respondent-State.*

Mr. Birendra Shukla, *Respondent No.2 is appeared in-person.*

Mr. Ritesh Mishra, *Petitioner is present in Court.*

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : APRIL 25, 2024

P. C.

1. The above Writ Petition was filed to quash and set aside the impugned notices dated 10th May 2023 and 30th June 2023 issued by Respondent No.1-Tahasildar, Ambarnath, District Thane.

2. After the filing of this Writ Petition, another notice dated 21st

December, 2023, was also issued to the Petitioner. According to the Petitioner, all these notices were issued pursuant to the letter dated 28th March, 2023, addressed by the Secretary, MAHARERA, Mumbai which had directed the Petitioner to pay interest to Respondent No.2 from 1st April, 2018 at the rate prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017, till possession of the apartment bought by Respondent No.2 was handed over to him.

3. The grievance in the Petition was that the order of the MAHARERA was only for payment of interest for the delay in handing over possession. Instead the notices issued by the Tahasildar were for an amount for in excess thereof, and which was actually the amount paid by Respondent No.2 for purchase of his apartment.

4. On 22nd January, 2024 after hearing the parties, we had directed the Petitioner to deposit a sum of Rs.5,91,497/- in this Court on or before 1st February, 2024. We had also directed that until 1st February, 2024, the Tahasildar shall not take any coercive action for recovery as per the notices dated 10th May, 2023, 30th June, 2023 and

21st December, 2023.

5. The matter thereafter came up again on 5th February, 2024, when the same was stood over to 8th February, 2024. On 8th February, 2024, we were informed by the learned Additional G.P. that as per the order to MAHARERA, the amount of interest payable to Respondent No.2 was Rs.7,03,715.60. The learned counsel appearing on behalf of the Petitioner informed the Court on the said date that the said amount of interest would be deposited in this Court on or before 8th March, 2024. He further stated that he will calculate the interest upto 10th March, 2024 and deposit the aforesaid amount. Considering the aforesaid statement, we had therefore, placed the matter for reporting compliance on 11th March, 2024.

6. On 11th March, 2024, a request was made by the learned counsel for the Petitioner that the Petitioner was in a position to give a Demand Draft of Rs.2 Lakhs in the name of the Registrar, High Court, Appellate Side, Bombay, which can be deposited and paid over to Respondent No.2. As far as making the balance payment was concerned, he submitted that he needed time till 25th April, 2024 and for which he would also pay interest. Purely out of indulgence, and as a last chance, we directed that the balance amount together with interest would be deposited in this Court on or before 25th April,

2024. We had also directed that the pay order of Rs.2 Lakhs was to be deposited with the Registrar, High Court, Appellate Side, Bombay, and once the amount is deposited, the Registrar, High Court, Appellate Side, Bombay, shall permit Respondent No.2 to unconditionally withdraw the aforesaid amount. As far as the amount of Rs.2 Lakhs is concerned, Respondent No.2 has confirmed to the Court today that the said amount has been withdrawn by him from the Registrar, High Court, Appellate Side, Bombay.

7. As far as the balance amount is concerned, the learned Advocate appearing on behalf of the Petitioner has today tendered two Demand Drafts, one in the sum of Rs.5,07,082/- and the other in the sum of Rs.14,448/-. Respondent No.2 confirms that these amounts reflect the entire amount due to Respondent No.2 as on date, along with interest.

8. In these circumstances, we direct that these Demand Drafts shall be deposited with the Registrar, High Court, Appellate Side, Bombay by tomorrow. Once the amount is deposited, the Registrar, High Court, Appellate Side, Bombay shall permit Respondent No.2 to unconditionally withdraw the aforesaid amounts.

9. We have noticed that the order of MAHARERA contemplates that interest is payable till possession of the apartment is handed

over to Respondent No.2. In the facts of the present case, we find that there is a serious dispute on this issue. According to the Petitioner-Developer, he is ready and willing to hand over possession of the apartment to Respondent No.2, but it is Respondent No.2, who is refusing to take the same. On the other hand, it is Respondent No.2's case that possession has not been taken because the flat is not ready and it does not have an electricity connection, water connection or the building has an operational lift as his apartment is on the 7th Floor. It is his further case that according to him, the balance consideration for the flat that is payable is only a sum of Rs.2,74,864/-, whereas according to the Petitioner-Developer, the amount is Rs.10,24,000/-, which not only includes the balance sale consideration, but also payment towards taxes and other various charges as contemplated in the registered sale agreement with Respondent No.2. We find that these issues cannot be gone into in the present Writ Petition. These issues between the Petitioner-Developer and Respondent No.2 can be agitated in appropriate proceedings. We find that at least till date the Petitioner-Developer has complied with the order of MAHARERA, and therefore, the notices dated 10th May 2023, 30th June 2023 and 21st December, 2023 issued by the Tahasildar do not survive any longer and are accordingly discharged.

10. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]