

Prajakta Vartak

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

**INTERIM APPLICATION NO. 49 OF 2024
AND
INTERIM APPLICATION NO. 2458 OF 2022
AND
INTERIM APPLICATION NO. 2681 OF 2022 (NOB TOB)
IN
WRIT PETITION NO. 8797 OF 2021**

Ashish Mhatre ..Applicant/Petitioner
Vs.
The Joint District Registrar
and Stamp Collector, Thane & Ors. ..Respondents

Mr. Amogh Karandikar for Petitioner.
Ms. Shruti Vyas, Add. GP with Mr. Sachin Kankal, AGP for State.
Mr. Sachin Masurkar for Respondent No.3.

**CORAM : G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATE : JANUARY 04, 2024.**

P.C.:

1. These are three interim applications filed in the above petition which came to be disposed of by an order dated 13 December, 2021 passed by a co-ordinate Bench of this Court. The petition was disposed of with a direction to respondent no.1 to complete the inquiry/notice reference No.1185-59 of 2017 within a period of eight weeks. The Court had observed that it relates to the demand for payment of the stamp duty by 44 members.

2. On such backdrop, the petitioner has moved Interim Application No.2458 of 2022 praying for a relief that respondent no.1 be directed to conclude the inquiry in a time bound manner without further delay and report to that effect be submitted before this Court.

3. The second interim application (Interim Application No.49 of 2024) is filed praying for the following reliefs:-

“a. that pending the hearing and final disposal of the present Interim Application, this Hon’ble Court be pleased to restrain the Respondent No. 3 Society, the Opponent No.1 and the Opponent No.2 from carrying out further steps in respect of redevelopment of the Respondent No.3 Society;

b. that pending the enquiry initiated as per the directions of this Hon’ble Court vide Order dated 13th December 2021 passed in Writ Petition No. 8797 of 2021, this Hon’ble Court be pleased to restrain the Respondent No.3, the Opponent No.1 and the Opponent No.2 from taking any steps pertains to the issue of redevelopment of the Respondent No.3 Society;

c. that pending the enquiry initiated as per the directions of this Hon’ble Court vide Order dated 13th December 2021 passed in Writ Petition No. 8797 of 2021, this Hon’ble Court be pleased to restrain the Flat holders, who are defaulters and/or having no title of their respective flats as per the Decree dated 28th April, 2010 passed in Special Civil Suit No. 179 of 2001 and as per the Transfer of Property Act, from participating, casting votes in the General Body Meetings and affairs of the Respondent No.3 Society.”

4. There is an interim application filed on behalf of the State Government (Interim Application No. 2681 of 2022) whereby a prayer has been made for extension of time to implement the order dated 13 December, 2021 passed by this Court on the writ petition. There is also a

prayer that respondent no.3-co-operative housing society be directed to submit all the documents of title/agreement for sale, of all its members with necessary details on the year of transaction, area of premises, survey numbers, etc. required for adjudication of the said document/instrument/transactions. There is another prayer that the directions be issued to the society and the petitioner to submit the details of transactions along with instrument/ agreement copy.

5. On such proceedings, we have heard learned counsel for the parties.

6. At the outset, we may observe that considering the decision of the Supreme Court in **State of Uttar Pradesh Vs. Brahma Datt Sharma & Anr.**¹, this Court having disposed of the petition vide an order dated 13 December, 2021 is *functus officio*. The Supreme Court has clearly held that no miscellaneous application could be filed in a writ petition which had disposed of. The Supreme Court also observed that the Court would have no jurisdiction to entertain any interim application as no proceedings are pending before the Court. In the facts and circumstances of the case, the Supreme Court observed that the High Court had committed an error in entertaining the respondent's application which was founded on an independent cause of action and when the proceedings stood terminated by final orders on the writ petition, it was not open to the Court to reopen

¹ (1982) 2 SCC 179

the proceedings by means of a miscellaneous application in respect of a matter which would provide a fresh cause of action. It was also observed that if such principle is not followed, there would be confusion and chaos, and the finality of proceedings would cease to have any meaning.

7. In our considered opinion, the relief in regard to any further inquiry etc. would be certainly not within the scope of the orders which are already passed on the present proceedings, which left it to the State Government/ Stamp authorities to take appropriate view of the matter in relation to the complaint of the petitioner.

8. Be that as it may, as the Court had directed that the inquiry be completed within eight weeks and for want of submission of the documents on behalf of the society and/or its members, the inquiry could not be completed, in our opinion, it would be appropriate that the State Government is granted extension of time to complete such inquiry, which be completed within a period of six weeks from today.

9. We make it clear that the State Government would examine all the documents which are submitted, and in the event the documents are not submitted, the authority and powers of the State Government are clearly defined under the Bombay Stamp Act and in exercise of such powers,

appropriate action can be resorted, in the event some of the members are not co-operating in submitting their documents. Moreover, it would be in the interest of members of the society to co-operate and get their documents corrected, in the event there is any deficiency on the stamp duty payable on the documents.

10. Needless to observe that the State Government would take all appropriate steps in accordance with law, in the interest of the State revenue.

11. With these observations, keeping open all contentions of the petitioner, as also of the society, on the issues pending consideration of the stamp authorities, we dispose of these applications.

12. No costs.

[FIRDOSH P. POONIWALLA, J.]

[G. S. KULKARNI, J.]