

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13182 OF 2023

MS Maharashtra Developers through its Authorised Partner Rakesh Sitaram Maheshwari ...Petitioner
Versus
Thane Municipal Corporation & Ors ...Respondents

Mr MJ Bhatt, *for the Petitioner.*
Mr Rohit Sakhadeo, *for Respondents Nos 1 & 2-TMC.*
Mrs AA Purav, AGP, *for the Respondent-State.*
Mr Rajdeep Khadapkar, *for Respondent No 4.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 29th January 2024

PC:-

1. Heard.

2. The Petitioner complains that the Thane Municipal Corporation (“TMC”) has quite improperly insisted that the Petitioner developer should execute a Permanent Alternate Accommodation Agreement (“PAAA”) with the 4th Respondent, Arvind Dattatray Chafekar, in regard to the premises in a building that the Petitioner is developing at Thane. Chafekar is alleged to have been a tenant of Petitioner’s predecessor in title.

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3. There are tenancy disputes, but we need not concern ourselves with those. There is no doubt that the developer gave an undertaking dated 21st September 2021, that Office No. 13, first floor of 240 sq ft would be kept aside for Chafekar, subject to his “submitting authenticated/general tenancy documents”. This cannot and does not mean that either the Petitioner or the TMC will decide the matter of tenancy. They cannot. Even we cannot. There is a Court of exclusive jurisdiction for that purpose.

4. Automatically, this means that there can be no requirement of execution of a PAAA with Chafekar because that is predicated on an acceptance of his tenancy claim, one that is very much in dispute. Learned Advocate for the Petitioner confirms that the Petitioner abides by the undertaking, to keep this area, Office No. 13, first floor, 240 sq ft. unencumbered without third-party rights being created of any nature and without parting with possession until the claim of Chafekar is decided.

5. If Chafekar succeeds, he will be entitled to the execution of PAAA in respect of these premises and possession, if possession is ready. But there cannot be a question of the execution of PAAA between the Petitioner and Chafekar for these premises at this stage. Certainly, the TMC cannot insist on this.

6. Mr Sakhadeo states that all that the TMC has done is to insist on compliance with the undertaking and the agreement. That is not so. The undertaking and the agreement are only to keep aside, reserve, and unencumbered a space so that should Chafekar finally

succeed, he is not left without a remedy. That is not the same thing as requiring the execution of a PAAA in favour of Chafekar. There is no such requirement or undertaking. The reason is obvious. If a PAAA is executed today and is registered and if Chafekar's claim finally fails, it is unclear as to what is to be done with that PAAA.

7. We are not concerned with any disputes about the area of the tenancy. That is the subject matter for another Court in another proceeding. We are only concerned with the undertaking that was given to and accepted by the TMC.

8. These observations are sufficient to dispose of the Petition. We direct that the TMC cannot insist upon the execution of a PAAA by the Petitioner with Chafekar. Any direction or order by TMC in that regard cannot be sustained and is quashed and set aside.

9. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)