

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.12061 OF 2024

Patel Builders And Developers Through Petitioners
Its Partners Bilal Rauf Patel And Ors.

Versus

The State Of Maharashtra Through Its Respondents
Secretary And Ors.

Mr. Nitin Gaware Patil i/b Mr. Sachin Thorat, Advocate for the
Petitioners.

Mr. R. S. Pawar, AGP, for Respondent Nos.1 to 3 – State.

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CORAM : R. M. JOSHI, J.

DATE : 28th AUGUST, 2024.

P.C. :

1. Heard.
2. Learned counsel for the Petitioners submits that the Chief Controller of Revenue Authority under the provisions of the Maharashtra Stamp Act, 1958 has passed the impugned order dated 01/08/2024 whereby, it is held that there is deficiency of stamping to the Development Agreement registered on 25th April, 2022 to the

extent of Rs.1,26,55,225/-. Learned counsel for the Petitioners has drawn attention of this Court to the order passed by the Collector dated 19/04/2022 and final order dated 20th April, 2022 whereby, the area of construction was observed to be 5010 sq.m. and Stamp Duty applicable for the Development Agreement was decided at Rs.25,73,700/-. It is his submission that the Assistant Director of Urban Development has also held conclusively that as far as the land in question there can be maximum construction to the extent of 4386.59 sq.m. It is his further submission that there is Railway Line abutting to the said land and in fact the portion of this land has been acquired for laying down the Railway Track. It is his submission that there cannot be a construction done beyond NOC issued by Konkan Railway. According to him without considering all these objections raised to the notice dated 29th December, 2022, the authority has passed order holding that there is a deficiency stamp Rs.1,26,55,225/-.

3. *Prima facie*, perusal of the record indicates that the said order has been passed on the basis of presumption that for the land in question the F.S.I. available is 4 and not 1. Atleast, at this stage, this Court finds the documentary evidence on record to indicate that

the no such F.S.I. was either availed or exhausted by the Petitioners.

4. Learned counsel for the Petitioners, on instructions, makes statement that the alleged Additional F.S.I. 3 was never consumed and that the Petitioners have no intention to consume the same at anytime in future.

5. Having regard to the aforesaid facts and considering the order impugned wherein these objections have not been considered by authority, arguable case has been made out by the Petitioners. Hence, there would be stay to the impugned order till next date of hearing.

6. Issue notice to the Respondents, returnable on 10th October, 2024.

7. Learned AGP waives service on behalf of Respondent Nos.1 to 3 – State.

8. Affidavit-in-reply, if any, be filed before the next date.

(R. M. JOSHI, J.)