

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7529 OF 2024

IN

FIRST APPEAL NO.1430 OF 2019

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M/s. Mira Real Estate Developers

.. Applicant

In the matter between:-

Union of India through
The Deputy Salt Commissioner

.. Appellant

Versus

The Estate Investment Company
Private Limited & Ors.

.. Respondents

Mr. Aspi Chinoy, Senior Advocate a/w Rujuta Patil, Yohaam Shah,
Hasan mushabber i/b Negandhi Shah & Himayatullah, Advocates for
the Applicant.

Mr. Devang Vyas, Senior Counsel, a/w Ameya Mahadik, Ashish Mehta
Sheelang Shah, Vaibhavi Chaudhari, Jalaj Prakash, Advocates for
Appellant.

Mr. Milind Sathaye, Senior Counsel a/w Pallavi Khale & Vidya
Vyavhare for BMC.

Mr. A. R. Patil, Addl. G.P. for Respondent-State.

Mr. Mahale, DMC Infrastructure for BMC.

Mr. Gandhi, Executive Engineer Bridge for BMC.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE: JULY 31, 2024

P. C.

1. The above Interim Application is filed seeking a prayer that the order dated 2nd September 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, be modified and the Applicant, in relation to the suit land, be permitted to enter into a leave and license agreement with Larsen & Toubro Limited and Apco Infratech Pvt Ltd for use as a casting yard, on such terms and conditions as may be finalized and agreed with Larsen & Toubro Limited and Apco Infratech Pvt Ltd.

2. Under what circumstances the above First Appeal is filed is set out by this Court [in brief] in its order dated 12th February 2024. This order was passed in Interim Application No.1041 of 2024 filed by the very same Applicant, seeking permission of this Court to permit them to give the suit land on a leave and license basis to the MCGM for using it as a casting yard for the Coastal Road Project and the Dahisar-Bhayander Link Project. This Application was allowed, and this Court directed that the Applicant is permitted to participate in the E-tender floated by the MCGM in this regard,

and in the event the Applicant is declared as a successful bidder, the Applicant will be at liberty to execute a leave and license agreement with the MCGM. It was further clarified that the order dated 12th February 2024 was passed without prejudice to the rights/claims of both sides in respect of the suit land.

3. It is the grievance of the Applicant that thought the Applicant was the successful bidder in the tender held by the MCGM, and a letter of acceptance was also issued to them in that regard, nothing further was done by the MCGM.

4. In the meanwhile, the contractors of the MCGM, who are undertaking the work of the Coastal Road Project [i.e. Larsen & Toubro Ltd], and the Dahisar-Bhayandar Link Road Project [i.e. Apco Infratech Private Limited], approached the Applicant for taking on leave and license a portion of the suit land for the purposes of using it as a casting yard for the said projects.

5. When this matter had come up on 25th July 2024, we had noted the submissions of Mr. Chinoy, the learned Senior Counsel appearing for the Applicant, that in light of the order passed by this Court on 12th February,

2024, there cannot be any opposition to the relief sought in the above Interim Application. This was because now, instead of the MCGM, the leave and license agreement would be entered into with the contractors of the MCGM, namely, Larsen & Toubro Limited and Apco Infratech Private Limited. Since this was the primary argument, before we proceeded further, we were of the view that the MCGM should inform the Court as to whether it has any objection if a leave and license agreement is entered into by the Applicant directly with its [MCGM's] contractors, namely, Larsen & Toubro Limited and Apco Infratech Private Limited. Accordingly, by our order dated 25th July 2024 we had called upon the MCGM to inform the Court accordingly.

6. Today when the matter is called out, Dr. Milind Sathe, the learned Senior Counsel appearing for the MCGM, on instructions, has stated that the MCGM has no objection if the suit land [or any part thereof] is given on a leave and license basis by the Applicant to Larsen and Toubro Limited and Apco Infratech Private Limited [who are its contractors], for the Coastal Road Project and the Dahisar-Bhayander Link Road Project respectively. We accept the said statement made by Dr. Sathe on behalf of MCGM.

7. We have perused the order dated 12th February 2024. From the aforesaid order we find that this Court, as an interim measure, had allowed

the Applicant to give the suit land on a leave and license basis to the MCGM for being used as a casting yard for the Coastal Road Project and the Dahisar -Bhayander Link Road Project. All that is sought to be done in the present Interim Application is that instead of entering into the leave and license agreement with the MCGM, now, the leave license agreements are going to be entered into with the contractors of the MCGM, namely, Larsen & Toubro Limited and Apco Infratech Private Limited. Once this is the case, we are of the opinion that there should be no impediment in allowing the above Interim Application.

8. However, the learned ASG appearing on behalf of the Original Appellant-Union of India through the Deputy Salt Commissioner, submitted that the order passed by this Court on 12th February, 2024 is challenged before the Hon'ble Supreme Court and the matter before the Hon'ble Supreme Court is now listed on 2nd August, 2024. He, therefore, submitted that in the event this Court is inclined to allow the above Interim Application, the same should be subject to certain safeguards and certain conditions.

9. We have heard the learned Additional Solicitor General on this limited aspect. We agree that certain safeguards and conditions as more particularly set out hereinafter ought to be put in place so that equities on all

sides are equally balanced. In these circumstances, we pass the following order:

(a) The above Interim Application is allowed in terms of prayer clause (a) which reads thus:

“(a) That the order dated 2nd September, 2021 passed by this Hon’ble Court in IA (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 be modified and the Applicant be permitted to enter into Leave and License with Larsen & Toubro Limited and Apco Infratech Private Limited for use as casting yard, in respect of the suit land or part thereof, on the terms and conditions as may be finalized and agreed with Larsen & Toubro Limited and Apco Infratech Private Limited.”

(b) This, of course, is subject to:

(i) any order passed by the Hon’ble Supreme Court in the pending SLP challenging the order dated 12th February 2024. We say this because the present order is based on the order dated 12th February 2024 and in the event the order dated 12th February 2024 is set aside by the Hon’ble Supreme Court, this order would naturally have to go. The fact that this order is made subject to the pending SLP will be an expressly informed to (i) Larsen and Toubro Limited, and (ii) Apco Infratech Private Limited, who will not be allowed to claim any equities if

the order dated 12th February 2024 is set aside by the Hon'ble Supreme Court; and

- (ii) whatever receipts are generated under the leave and license agreements entered into with Larsen & Toubro Ltd. and Apco Infra Pvt Ltd., an account of these receipts shall be maintained and disclosed to the Appellant every quarter. What is the fate of these receipts and whether the same ought or ought not to be paid over to the Appellant in the event the above Appeal succeeds, will be subject to any orders passed by this Court when it finally hears the above Appeal.

10. The above Interim Application is accordingly disposed of. However, there shall be no order as to costs.

11. We now place the above Appeal on board for directions on 22nd August 2024 when this Court will peremptorily fix a date for hearing of the above Appeal

12. 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.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]