

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 601 OF 2024

Fairleaf Developers Pvt Ltd ...Petitioner
Versus
 Brihanmumbai Municipal Corporation & Ors ...Respondents

Mr Karl Tamboly, with Sheetal Shah, i/b Mehta & Girdharlal, for the
Petitioner.

Ms Pooja Yadav, for the Respondent-MCGM.

Mr Shashikant Agatkar, Sub-Engineer (Estate), present.

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 22nd February 2024

PC:-

1. Rule.

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 RAMCHANDRA
 SANKPAL

2. Rule returnable forthwith in view of the narrow controversy.

The two prayers in the Petition are as follows:

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 RAMCHANDRA
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 Date: 2024.02.23
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“(a) That Hon’ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the records and proceedings pertaining to the proposed redevelopment on Plot No 76 of Worli Estate Scheme No 58, Bearing C S No 935, of Worli Division, B G Kher Marg, Worli, In G / South Ward, in respect of NOC to further CC as per amended Plan v/No P-12604/2022/(935)/G/South/Worli dated 21.07.2023 and after examining the validity, legality and propriety thereof

the same be allowed;

(b) That Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent State Government and the Municipal Authorities to grant NOC to further CC as per amended Plan v/No P-12604/2022/(935)/G/South/Worli dated 21.07.2023 after adopting the free permissible area admeasuring 1619.09 sq mtrs in One Time Premium Calculation as per condition No 3 in Lease dated 03.01.1973;

3. The question of the one-time premium calculation is actually resolved to this extent that the demand had been paid by the Petitioner, though under protest. The Deed of Lease which is in favour of the Petitioner's predecessor-in-title is of 1973. The assignment to the Petitioner is of 25th April 2022. This is what led to the demand for a transfer premium. What the Petitioner now seeks is a No Objection Certificate ("NOC") for further construction above plinth and beyond, i.e., further constructions as well.

4. Mr Tamboly for the Petitioner states that the plans that have been submitted include applications for permissions presently proposed in regard to a built-up area of 1403.50 sq mts excluding fungible Floor Space Index ("FSI").

5. We direct the Municipal Corporation of Greater Mumbai ("MCGM") to take up the application for an NOC and for sanction for a further Commencement Certificate in terms of the amended plan dated 21st July 2023.

6. We note that the payment by the Petitioner of the one-time premium is not in dispute. The application will be processed in accordance with the law in regard to the available FSI. An area of 1403.50 sq mts excluding fungible FSI is part of the approved plans. The present application does not exceed 1619.09 sq mts. Obviously, the MCGM will need to have this application processed following the necessary internal process.

7. We note that on 12th February 2024, the Estates Department has submitted a proposal for approval to allow the free permissible area as per the Lease Agreement having regard to the peculiar facts and circumstances of the case.

8. It has clarified that this will not set a precedent and every application will be on a case-to-case basis. This approval is fairly recent of 12th February 2024. We allow the MCGM three weeks' time to complete the process.

9. Liberty to the Petitioner to apply.

10. Rule is made absolute in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)