

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 940 OF 2024
IN
WRIT PETITION NO. 1088 OF 2023

Sarvesh Enterprises	...Applicant
<i>In the matter between</i>	
Ketan Amratlal Joshi & Ors	...Petitioners
<i>Versus</i>	
The Chief Officer MBR&R Board, MHADA & Ors	...Respondents

AND
INTERIM APPLICATION NO. 941 OF 2024
IN
WRIT PETITION NO. 746 OF 2023

Sarvesh Enterprises	...Applicant
<i>In the matter between</i>	
Manish Digambar Sawant & Ors	...Petitioners
<i>Versus</i>	
The Chief Officer MBR&R Board, MHADA & Ors	...Respondents

Mr Ashish Kamat, Senior Advocate, with Saurabh Utangle i/b Rohan Sawan, for the Applicant in both IAs.
Mr Mayur Khandeparkar, i/b Omar Shaikh, for the Respondent in IA/940/2024 & Original Petitioner in WP/1088/2023.
Ms Manisha Jagtap, for the Respondent-MHADA in both IAs.

Mr Sameer Tendulkar, *for the Intervenor in both IAs.*
Mr Dipesh Siroya, AGP, *for the Respondent-State in IA/941/2024.*
Mr Prashant Kamble, AGP, *for the Respondent-State in*
IA/940/2024.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 1st April 2024

PC:-

1. These two Interim Applications are by the original 3rd Respondent, the developers, Sarvesh Enterprises. They seek that delays in compliance with our order of 2nd November 2023 be condoned. When it is put like that, it sounds trivial, almost as if one could condone the delay for the asking. But that is not so. The matters arose in the context of two Writ Petitions that complained that there were unpaid dues of transit rent going back to 2018. When the Petitions were first listed before us, Counsel then appearing for the 3rd Respondent obviously immediately understood what the likely result was going to be and immediately offered to make a deposit of substantial amounts, first of Rs 1,70,57,200/- and later an amount of Rs 77,93,338/-. We provided for this in our order of 2nd November 2023. Those amounts have been paid.

2. But there was a controversy about whether there were additional amounts that were yet due, for the Petitioners said that they had claims in larger amounts which had not been adjudicated, including claims for periodic increases in transit rent. We set out a protocol for this in paragraphs 12 to 17 of our order. The claim was to be made to the Maharashtra Housing and Area Development

Authority (“MHADA”). An officer was to hear both sides and ultimately if that officer found an amount was due, he was to prescribe a period of not less than three weeks from the date of that order for the amount to be deposited with MHADA.

3. This exercise was completed and the MHADA officer did make an order but payment by the 3rd Respondent was delayed by 30 days.

4. Then in paragraph 21 of our 2nd November 2023 order we dealt with the question of ongoing transit rent. This had to be paid quarterly. The first quarter was October to December 2023 and the amount had to be paid by 15th December 2023. That payment was delayed by as much as three months.

5. We provided for the consequences of such defaults in paragraphs 23 and 29 of our order of 2nd November 2023. The consequences included the cancellation of the No Objection Certificate (“NOC”) in favour of the 3rd Respondent.

6. Ultimately, this is not a matter for the Court to decide. The developer has promised completion by December 2024. The question is what is it that the Petitioners are willing to accept. After all, our order was meant for the protection of those Petitioners.

7. Mr Khandeparkar on behalf of the Petitioners states on instructions that the Court should consider making an order for payment of some reasonable interest and ensure that the

apportionment of the interest payment between all individuals is maintained on parity. We have restricted our previous order to only the Petitioners. There are others who attempted to intervene which we did not allow. We are not making any orders in their favour. That would be unfair. They cannot simply sit on their hands, not assert their rights and reap the benefits of somebody else taking all this trouble.

8. We fix interest at 10% per annum on all delayed payments. The amount is to be paid no later than by 15th April 2024. The amount will be deposited with MHADA in the first instance. MHADA will decide the apportionment between the Petitioners.

9. Future payments of quarterly transit rent will be exactly on schedule with no default whatsoever. We say this because the only reason that Mr Khandeparkar has instructions to agree to this is that the promised date of completion is as close as December 2024 and it is evidently not in the interest of the Petitioners to have that delayed. We will maintain our order in regard to the timeliness of all future payments and the completion of the project on schedule.

10. As regards to Petitioners Nos 12 to 16, the Permanent Alternate Accommodation Agreements (“PAAAs”) have not yet been executed. Mr Kamat for the Applicants has instructions to state that those PAAAs will be executed no later than by 15th April 2024.

11. Mr Kamat also makes a statement on instructions that all future payments will be made exactly on time.
12. We accept these statements as undertaking to the Court.
13. Interim Applications are disposed of in these terms.
14. MHADA's cancellation of NOC is thus allowed to be withdrawn. MHADA will pass a separate order in that regard in view of this order.
15. The IAs are disposed of in these terms. No costs.

(Kamal Khata, J)

(G. S. Patel, J)