

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 21 OF 2024

Ashvi Developers Ltd	...Petitioner
<i>Versus</i>	
Slum Rehabilitation Authority & Anr	...Respondents

Mr Viraag Tulzapurkar, Senior Advocate, with Tushad Cooper, Senior Advocate, Viraj Parikh, & Samit Shukla & D Patel, i/b DSK Legal, for the Petitioner.
Mr Jagdish G Aradwad (Reddy), for Respondent No 1-SRA.
Mr Himanshu Takke, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 20th March 2024

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PC:-

- 1. Rule.** Returnable forthwith.

- 2. The only challenge in this mercifully short Petition is to three lines at page 150 of the Writ Petition, page 2 of Exhibit “K” which starts at page 149. This is a communication of 26th December 2022. The Slum Rehabilitation Authority (“SRA”) apparently found an excess Floor Space Index (“FSI”) proposed in the project. It therefore asked the Petitioner to submit “the registered Lease**

Deed/Development Agreement/Power of Attorney/NOC from the owner for the additional area/FSI/TDR”.

3. Nobody is able to understand this. Nobody is able to explain it. The reason is that the lease deed has already been submitted. A copy is at page 35. The relevant portion is at pages 41 and 42. It mentions the base FSI/area of 3,05,000 sq ft and the basic FSI 1,44,820 sq ft generated from the layout and TDR FSI of 1,60,180 sq ft from outside properties. It however clarifies in sub-clause iv that the lessee, i.e., the Petitioner would have the right to construct additional area that may be permitted in the commercial complex, Building No 1 free of FSI on payment of premium or otherwise as per prevalent building regulations in accordance with the prevailing Development Control Regulations or any modification or reenactment thereof from time to time. It is the latter portion that seems to have been completely missed by the SRA.

4. In any case, a copy of the No Objection Certificate (“NOC”) from the owner is also on record and we find this at page 120 of the record. This is addressed by the owners Eastern Ceramics Ltd and Sheth Developers Pvt Ltd to the Petitioner. They jointly confirmed not having an objection to Atithi Builders and Constructors Pvt Ltd and Ashvi Developers Pvt Ltd “availing, utilising and loading the benefit of 0.33 FSI of the larger plot available due to increase in permissible FSI in the suburban area of greater Mumbai from the existing FSI of 1.0 to 1.33 and such other amendments from time to time.”

5. In light of this, the initial increase or difference noted by the SRA may factually exist. That is not in dispute. But the SRA's requisition is nothing but a demand for a duplication of material that is already on record.

6. Indeed, we are unable to see what else the Petitioner could do except to once again furnish to the SRA the very same documents that are already with it and which have already been furnished.

7. As Mr Tulzapurkar rather sharply puts it, "every document has a price in these matters".

8. We agree.

9. Rule is accordingly made absolute in terms of prayer clauses (a) and (b), which read as follows:

"(a) this Hon'ble Court be pleased to issue a writ of Mandamus, or a writ in the nature of Mandamus or appropriate writ, order or direction, to call for the records and proceedings in respect of the Impugned Letter dated 26th December 2022 (Exhibit "K" herein, and after considering the same, quash and set aside the same in so far as it seeks to impose the Impugned Condition.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order, or direction, under Article 226 of the Constitution of India,

directing the Respondent to issue a revised LOI, IOA and CC to the Petitioner after accepting 32.02% of additional FSI generated from the Larger Plot to be consumed in Building No. 1 pursuant to the change in law on account of enactment of DCRP 2034.”

(Kamal Khata, J)

(G. S. Patel, J)