

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 765 OF 2024

Oshiwara Link Plaza Commercial Premises ...Petitioner
Cooperative Society Ltd
Versus
Maharashtra Housing and Area Development ...Respondent
Authority (MHADA)

**Mr Anil Singh, Senior Advocate, with Amogh Singh, Rahul Arora,
Adarsh Vyas & Ruchita Verma, for the Petitioner.**
Mr PG Lad, with Sayli Apte, for Respondents Nos. 1 to 3-MHADA.
Mrs Uma Palsuledesai, AGP, for the Respondent-State.
Mr Anil Rathod, Executive Engineer, Bandra Division, present.
Mr Rodrigues Motiram, Chief Accounts Officer, present.
Mr Pankaj Bobade, Estate Manager, MHADA, present.

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**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 4th April 2024

PC:-

1. On instructions, Mr Lad for Maharashtra Housing & Area Development Authority (“MHADA”) says that the impugned demand at Exhibit “N” at page 154 (English translation at page 155A) is withdrawn. He seeks liberty to issue a fresh demand but strictly in accordance with law.

2. The request is reasonable but we need to put this in a certain context. We are saying nothing about any applicable Goods and Service Tax (“GST”). But what concerns us in the impugned notice are two certain issues. The first is that there is a claim made in 2023 for alleged premium and ground rent going back in time to 6th June 1996. This is without any particularization whatsoever as to the ground rent that has been paid and how premium can be calculated retrospectively in time.

3. Further, there is a claim made for interest on alleged arrears of ground rent and we will be forgiven if we observe that this rent is utterly fantastic because interest is claimed at 24% per annum. The interest component itself to the society is nearly Rs. 12.5 Crores. We take it that if MHADA believes that it is entitled to charge interest at 24% pa, then it must also be willing to pay interest at 24% pa and we would be very interested to know if it will accept deposits at this rate of interest.

4. Then there is a reference to a Resolution of 26th August 2021 which claims ground rent *in advance* from 2021 to 2026 and GST apparently in “arrears” from 2021 to 2026.

5. We understand MHADA’s anxiety to eliminate all possible uncertainties especially at the time of such serious climate change because nobody knows whether by 2026 this city as we now know it will even exist or whether MHADA’s jurisdiction will have been literally eroded. But that cannot justify a demand of this kind.

6. Therefore, when Mr Lad says that the revised demand will be computed 'exactly in accordance with law', we trust that his officers will keep these observations in mind.

7. In this context Mr Singh points out that there is a communication of 6th July 2023 which the impugned communication ignores confirming that ground rent has been paid from 1996 till 2023. Immediately this would mean that there is no question of arrears let alone interest on arrears.

8. Mr Singh's concern is that the Lease Agreement for the subject plan CTS No. 1(part) in the name of the Petitioner or a Deed of Conveyance are not been executed. This is the subject of prayer clauses (a), (b) and (c) of the Petition. These prayers are reproduced below:

“(a) That this Hon’ble Court be pleased to issue a writ of mandamus and/or issue an appropriate order or direction in a writ of mandamus directing Respondent nos. 1-2 to take steps to execute a Lease Agreement for the “subject land” being C.T.S. No. 1 (pt) in the name of the Petitioner;

(b) That this Hon’ble Court be pleased to issue a writ of mandamus and/or issue an appropriate order or direction in a writ of mandamus directing Respondent nos. 1-2 to take steps to execute a Deed of Conveyance for the Subject Building being C.T.S. No. 1(pt) in the name of the Petitioner;

(c) That this Hon’ble Court be pleased to issue a writ of mandamus and/or issue an appropriate order or direction in a writ of mandamus directing Respondent nos. 1-2 to take steps to issue a “no dues certificate” in the name of the Petitioner thereby declaring that the entire amount of the

lease rent has been paid by the Petitioner.”

9. So far as the prayer clause (c) is concerned, the No Dues Certificate will obviously depend on whether or not MHADA issues a revised demand and whether that demand is paid, accepted or challenged, and if challenged, the result of that challenge. It is not possible today therefore to make an order in terms of prayer clause (c).

10. However, having regard to the manner in which the impugned demand was made, we believe that it is necessary to direct MHADA to now take steps to execute the Lease Agreement for the subject plan and the Deed of Conveyance of the building in the name of the Petitioner but this will be subject to any contentions that MHADA may have in regard to a revised demand. Mr Singh for his part fairly states that the execution of a Lease Deed and Deed of Conveyance of the building will not be taken as an equity against MHADA should there be a revised demand.

11. We also believe it is necessary to observe and direct that MHADA is not entitled now to submit a revised demand after an inordinate delay. If there is to be a demand it must be raised and sent to the society no later than within 10 weeks from today. But the fact that there is a demand will not be used by MHADA as a reason not to execute the Lease Agreement or the Deed of Conveyance since we have adequately protected the MHADA in that regard.

12. It goes without saying that all terms and conditions of the tender must be strictly adhered to and it is impermissible for MHADA to unilaterally alter the terms and conditions of the tender on which the Petitioner made a bid and which has been accepted by MHADA.

13. The draft Lease Deed and Conveyance Deed have already been exchanged. The final documents are to be executed within a period of three weeks from today.

14. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)