Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 439 OF 2024

Vinod Mohanlal Jain ...Petitioner

Versus

The State of Maharashtra, Ministry of Urban Development Department & Ors ...Respondents

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Mr Mayur Khandeparkar, *with Aditya Miskita i/b Kuldeep R Singh, for the Petitioner.*
Ms Jaymala Ostwal, Addl GP, *for the Respondent-State.*
Mrs Uma Palsuledesai, *with Pooja Yadav, for the Respondent-MCGM.*

CORAM **G.S. Patel & Kamal Khata, JJ.**
DATED: **13th March 2024**

PC:-

1. **Rule,** returnable forthwith.

2. There is an Affidavit in Reply of the Municipal Corporation of Greater Mumbai ("**MCGM**"). We are thoroughly dissatisfied with the explanation of the MCGM on Affidavit. All that we have been told is that there is an anticipated or perceived loss of revenue to the MCGM. On this basis, it is solemnly suggested that it is open to the MCGM as an administrative body and an instrumentality of

the State to completely ignore its own past actions, commissions, policy and decisions, although these have been acted upon in terms of severe financial and other prejudice by the Petitioner.

3. The reliefs in the Writ Petition are these:

> "a. The Hon'ble Court be pleased to call the records;
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> b. That this Hon'ble Court be pleased to declare that the Petitioner's proposal dated 20th August, 2021, which was approved by the Respondent No. 3 Municipal Commissioner on 18th November, 2021, shall be applicable and processed under the May 2021 OTP Policy dated 10th June, 2020, approved vide ICR no.75 dated 25th February, 2021 and CR no. 190 dated 4th May, 2021 and not as per November 2022 OTP Policy dated 25/11/2022 and or the December 2021 OTP Policy dated 13/12/2021;
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> c. That this Hon'ble Court be pleased to declare that any and all the subsequent revisions and/or new OTP policies, including but not limited to the December 2021 Policy dated 25/11/2022, and/or any other future OTP Policy, are not applicable to the Petitioner's proposal dated 20th August, 2021, which was approved by the Respondent No. 3 Municipal Commissioner on 19th November, 2021;
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> d. That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus, directing the Respondent Nos.2 top 6, either by themselves or through their delegates, to process and approve the Petitioners Application dated 20th August 2021, which was approved by the Respondent No. 3 Municipal Commissioner on 18th November, 2021, under the May 2021 OTP Policy dated 10th June, 2020, approved vide ICR no.75 dated 25th February, 2021 and CR no. 190 dated 4th may, 2021;

> e. That this Hon'ble Court be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction in the nature of Mandamus, directing the Respondent Nos. 2 to 6, either by themselves or through their delegates, to cancel, revoke, rescind and/or recall the (i) OTP calculation dated 4th October 2023 and (ii) Demand Letter dated 7th November, 2023, to the extent of the OTP that has been demanded at Sr. No.1 therein, issued by the Respondent NO. 2 Corporation;"

4. The entire case is that the MCGM has erroneously demanded a One Time Premium ("**OTP**") for excess chargeable built-up area. We noted on 7th February 2024 the statement by Mr Khandeparkar for the Petitioner that although not payable, the amount computed in terms of Sr Nos 2 to 6 of the table at Exhibit 'N' at page 105 would be deposited. That amount has been deposited.

5. The property in question is a plot of 534.28 sq mts at CTS No 10/380 of the Malabar and Cumballa Hill Division at 2nd Dadi Sheth Road, Babulnath. The challenge in the Petition is to the OTP calculation of 4th October 2023 and the demand letter dated 7th November 2023 for excess chargeable area as Rs 2,79,90,500/-. The case of the Petitioner briefly stated is that this entire charge is erroneous because it is inapplicable to the case of the Petitioner.

6. On 8th August 2017, the Petitioner obtained from Respondent No 6, the Assistant Commissioner (Estates) a No Objection Certificate ("**NOC**") for the issuance of a Commencement Certificate ("**CC**") for a project at this site. At that time, the OTP for the excess chargeable area was computed at Rs 4,12,53,300/-. In terms of that NOC from the Estates Officer, the Petitioner paid 50% of the OTP, i.e., Rs 2,06,26,650/-.

7. On 10th June 2020, the MCGM came out with another OTP policy for excess chargeable area. This had a revised method for computing the OTP. This was approved by the Improvements Committee of the MCGM on 25th February 2021 and by the Corporation on 4th May 2021. This new OTP policy specifically said that the OTP paid fully or partially in ongoing proposals where an NOC to the full Occupation Certificate ("**OC**") was not yet granted would be adjusted towards the balance OTP computed as per the revised policy, if there were any other premia, dues, etc. payable to the Estate or any other department of the MCGM. This would require approval at the higher levels. There would, however, be no refund. In other words, this revised policy of 2020 with effect from 2021 said that the MCGM would make adjustments of previously paid OTPs against all other claims and demands but would not issue a refund.

8. Nobody challenged this policy. The Petitioner acted under it. On 20th August 2021, the Petitioner filed an application for an NOC for an OC under this revised policy of 10th June 2020. On 22nd October 2021, the Petitioner's application for an NOC for the OC was approved by the MCGM. A copy of this document is at Exhibit 'G' at page 60 and it makes for the most interesting reading. This is precisely what the MCGM is now in 2023, two years later, impermissibly attempting to disavow. The reason is that the OTP for the excess chargeable area was computed as nil by the MCGM itself on 22nd October 2021. This necessarily meant, following the terms of the policy of 10th June 2020 (Exhibit 'E'), that the Petitioner was entitled to an adjustment (but not a refund) of Rs 2,06,26,650/- — 50% of the original OTP amount that had been paid. This application for an adjustment was approved by the MCGM on 18th November 2021 (page 64). However, instead of processing this application further, the 3rd Respondent, i.e., the Municipal Commissioner seems to have kept the Petitioner's proposal in abeyance and this was despite the fact that the proposal had in fact been already approved.

9. The Petitioner wrote reminder letters in January and April 2023 asking that the application be processed, i.e., the application for an NOC for the OC. On 1st June 2023, there is an internal note of the MCGM. A copy is at Exhibit 'M' at page 97. It recommends approval of the Petitioner's application under the 10th June 2020 OTP policy and remarks that this is a peculiar case. This communication is signed by the Executive Engineer (Estates) and the Assistant Commissioner (Estates).

10. Two things are notable about this. To begin with, the OTP was a demand that emanated from the Estates Department. The Estates department itself had at the highest levels said that the Petitioner's proposal needed to be accepted because it was a "peculiar" case. What was this peculiarity? It was simply that the Petitioner had paid 50% of the OTP prevalent at the time in 2017 and then sought in 2020, in terms of the 10th June 2020 policy, an adjustment of the amount previously paid. The other dimension to this peculiarity is that the OTP under the 10th June 2020 policy had been specifically noted as nil.

11. This communication of 1st June 2023 appears to have been wholly ignored. Instead on 4th October 2023, the MCGM came up with the impugned OTP calculation now saying that the OTP for the excess chargeable area was Rs 2,79,90,500/-. This had been arrived at by adopting and applying a wholly new method for a further revised OTP policy of 25th November 2022.

12. We do not know how this can be done. This is not a question of the later sanction date being applicable. The Petitioner's application under the 10th June 2020 OTP policy had already been approved and sanctioned on 21st October 2021 long before the introduction of the revised OTP policy of 25th November 2022.

13. It is utterly pointless for the MCGM to say that this represents "a loss of revenue" to the Municipal Corporation. Sometimes the Municipal Corporation should be far more concerned about what we can only describe as "a loss of reputation" rather than a loss of revenue. By this logic, no application to the MCGM should ever be allowed. All applications should forever be kept pending. There will always be some revised policy under which there will be some increased demand. Apparently, on this basis, the sole objective of planning law in Maharashtra and the provisions of the Mumbai Municipal Corporation Act, 1888 is to ensure a constantly increasing flow of revenue to the MCGM with no obligation on the part of the MCGM to close any application, file or process. Such a suggestion has only to be stated to be rejected.

14. This calculation then took the form of the demand letter at Exhibit 'N' impugned in the Petition. This is where the demand for Rs 2,79,90,500/- is payable.

15. The submission by Mr Khandeparkar is that the OTP demanded is Rs 73,63,850/-, i.e., the difference between the inflated 2022 policy demand of Rs 2,79,90,500/- and the amount already paid of Rs 2,06,26,650/-.

16. The OTP for the excess chargeable area has to be reckoned as per the approval of 22nd October 2021, i.e., it has to be reckoned as nil. The next reason for holding so is that at no point has the MCGM revoked, cancelled, modified or set aside its 22nd October 2021 approval. It has simply proceeded on the basis that it does not matter, does not exist or is not an impediment in some enthusiastic Municipal Corporation officer's way. We do not understand how Municipal Officers can conduct themselves like this, wholly ignoring past records and approvals. It is almost as if they continue undeterred by any previous actions. Once in a while they stumble upon some previous application or permission granted by them but then they seem to pick themselves up and carry on regardless as if all that happened in the past is inconsequential.

17. Mr Khandeparkar accepts that the demands at Sr Nos 2 to 6 of the chart are in fact correct. What is missing, however, is the adjustment of Rs 2,06,26,650/-, the amount already paid by the Petitioner towards the OTP for the excess chargeable area under the 10th June 2020 policy.

18. He submits a revised calculation. A copy is annexed to this order. It shows that at the end of the calculus an amount of Rs 63,25,268/- is payable.

19. Consequently, from the amount that is deposited in Court the MCGM will be entitled to withdraw the amount of Rs 63,25,268/-. The remaining amount deposited is allowed to be withdrawn by the Petitioner. The amount to be withdrawn by the Petitioner will thus be Rs 2,79,90,500/-. What will remain for withdrawal by the MCGM from the deposit is Rs 63,25,268/-.

20. The impugned demand at Exhibit 'N' is quashed and Rule is made absolute formally in terms of prayer clauses (b) to (e) with directions as set out above.

21. Rule is made absolute in these terms. In the facts and circumstances of the case, there will be no order as to costs.

22. All concerned will act on an authenticated copy of this order.

(Kamal Khata, J) **(G. S. Patel, J)**

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WRIT PETITION NO. ~~504~~ 439 OF 2024

Vinod s/o Mohanlal Jain ....Petitioner

Versus

1. State of Maharashtra
2. Municipal Corporation of Greater Mumbai
3. The Municipal Commissioner
4. The Additional Municipal Commissioner (W.S.)
5. The Jt. Municipal Commissioner (Improvement)
6. The Assistant Commissioner (Estate) ....Respondents

CHART ON OTP CALCULATION

Sr. No.	Particulars	Amount (As per Demand Letter and OTP Calculation)	Amount (As per OTP Policy dated 10th June, 2020)
1.	OTP towards excess chargeable area	Rs. 2,79,90,500/-	NIL
2.	OTP for fungible BUA for sale residential component	Rs. 34,47,500/-	Rs. 34,47,500/-
3.	10% Transfer Premium	Rs. 2,29,60,000/-	Rs. 2,29,60,000/-
4.	Extra Ground Rent	Rs. 5,160/-	Rs. 5,160/-
5.	Penalty for occupying premises without NOC of Estate Department	Rs. 4,32,400/-	Rs. 4,32,400/-
6.	Penalty for not obtaining NOC for Amended Plans	Rs. 1,06,858/-	Rs. 1,06,858/-
7.	Less OTP already paid	Rs. 2,06,26,650/-	Rs. 2,06,26,650/-
8.	**Total amount payable**	**Rs. 3,43,15,768**	**Rs. 63,25,268/-**