

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3050 OF 2024

1. **NISARG SAMIR VORA,**
Age 35 year
2. **DHWANI NISARG VORA,**
Age 34 year
both adults, of Mumbai, Indian
Inhabitants, having address at 1703,
17th Floor, "Ayana", Plot No. 15, N. S.
Road No. 10 Ext., JVPD Scheme,
Andheri West, Mumbai- 400 058, now
known as Gulmohar Cross Road No.
12, Mumbai- 400049.

... PETITIONERS

~ VERSUS ~

1. **THE MAHARASHTRA HOUSING
AND AREA DEVELOPMENT
AUTHORITY,**
a statutory corporation constituted
under the provisions of the
Maharashtra Housing and Area
Development Act, 1976 having its
address at Grihanirman Bhavan,
Kalanagar, Bandra East, Mumbai – 400
051.
2. **THE CHIEF EXECUTIVE
OFFICER,**

SUMEDH
NAMDEO
SONAWANE

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SUMEDH NAMDEO
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Date: 2024.06.24
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officer of Respondent No. 1 having his address at Grihnirman Bhavan, Kalanagar, Bandra East, Mumbai- 400 051.

3. ARMAAN REAL ESTATE PVT. LTD.,

company incorporated under the provisions of Companies Act, 1956 having its registered office at S-3/A, Seceond Floor, Prime Mall, Irla CHS Ltd., Irla Society Road, Vile Parle (West), Mumbai- 400 056.

4. MANGALYA CO-OPERATIVE HOUSING SOCIETY LTD.,

a cooperative housing society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 having its address at Plot No. 15, N. S. Road No. 10 Ext., JPVD Scheme, Andheri West, Mumbai- 400 058, now known as Gulmohar Cross Road No. 12, Mumbai - 400049

...RESPONDENTS

WITH

WRIT PETITION NO. 3094 OF 2024

1. ARMAAN REAL ESTATE PRIVATE LIMITED,

A company incorporated under the Companies Act, 1956 and deemed to have registered under the Companies Act, 2013 Having its address at S-3/A, 2nd Floor, Prime Hall, Irla CHS Ltd., Irla Society Road, Vile Parle (West), Mumbai 400056.

2. **RAMESH LUDAHNI,**
An adult, Indian inhabitant, Director of
Petitioner NO. 1 having its address at S-
3/A, 2nd Floor, Prima Mall, Irla CHS
Ltd., Irla Society Road, Vile Parle
(West), Mumbai 400056.

... PETITIONERS

~ VERSUS ~

1. **THE MAHARASHTRA HOUSING
AND AREA DEVELOPMENT
AUTHORITY,**
a statutory corporation constituted
under the provisions of the
Maharashtra Housing and Area
Development Act, 1976 having its
address at Grihanirman Bhavan,
Kalanagar, Bandra East, Mumbai – 400
051.
2. **THE CHIEF EXECUTIVE
OFFICER,**
An officer of Respondent No. 1 having
its address at Grihnirman Bhavan,
Kalanagar, Bandra East, Mumbai- 400
051.
3. **MANGALYA CO-OPERATIVE
HOUSING SOCIETY LTD.,**
a cooperative housing society registered
under the provisions of Maharashtra
Co-operative Societies Act, 1960 having
its address at Plot No. 15, N. S. Road
No. 10 Ext., JPVD Scheme, Andheri
West, Mumbai- 400 058, now known as
Gulmohar Cross Road No. 12, Mumbai
- 400049

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Mr Mayur Khandeparkar, with**
 Nishant Chotani & Sahil
 Saiyed.

FOR RESPONDENT NO. 1 Mr Akshay P Shinde.
IN WP/3050/2024

**FOR RESPONDENTS
NOS. 1 & 2-MHADA** **Ms Aparna Kalathil**, *with Shreya
Shah, i/b PG Lad.*

**FOR RESPONDENT NO. 3 Mr Arun P.
IN WP/3094/2024 AND
FOR RESPONDENT NO.4
IN WP/3050/2024**

**FOR THE PETITIONER
IN WP/3094/2024 AND
FOR RESPONDENT NO. 3
IN WP/3050/2024.**

**Mr Pravin Samdani, Senior
Advocate, with Nivit
Srivastava, Neil M & Sneha
Patil, i/b Manilal Srivastava
Associates.**

**CORAM : M.S.Sonak &
Kamal Khata, JJ.**

DATED : 24th June 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. The learned counsel for the Petitioners state that the issues involved in both these Petitions are the same, and therefore, the common order can dispose of these Petitions.

3. Rule in both these Petitions. The rule is made returnable immediately with the consent of learned counsel for the parties.

4. For convenience, Writ Petition No. 3094 of 2024 is taken as the lead Petition. The Petitioner in Writ Petition No. 3094 of 2024 is the builder/developer, and the Petitioner in Writ Petition No. 3050 of 2024 is one of the flat purchasers in the building constructed by the Petitioner in Writ Petition No. 3094/2024.

5. The Petitioners were granted permission to construct a building with a height of 57.13 mtrs based inter alia on a No Objection Certificate (NOC) issued by the Airport Authority of India (AAI). However, at a later point in time, the AAI sought to reduce this height to 37.77 mtrs. Therefore, Petitioners were constrained to institute Writ Petition (L) No. 1752 of 2022 and Writ Petition (L) No. 1901 of 2022 before this Court.

6. In the above Petitions, by order dated 27th January 2022, the coordinate division bench observed that at least prima facie, the AAI would have no power to cancel the earlier NOC permitting particular height and to substitute the same by another NOC with retrospective effect by substantially reducing the height permission already granted earlier. Accordingly, ad interim reliefs were granted in terms of prayer clause (b) in Writ Petition (L) No. 1752 of 2022 until further orders. The coordinate bench, however, made it clear that if the Petitioners carry out any constructions on the plot in question from the date of order, the same would be subject to further orders that may be passed by the Court in the said Petitions.

7. The Petitioners accordingly constructed their building based on the original NOC from the AAI and the plans approved by the Maharashtra Housing and Area Development Authority (MHADA) from time to time. The MHADA, on 18th April 2024, granted Full Occupation Certificate (OCC) cum building completion work from this building. This communication, dated 18th April 2024, is at Exhibit 'L' on page 91 of the Petition.

8. Clause 2 of the OCC certificate dated 18th April 2024 clarifies that this OCC is issued without prejudice to the legal matters pertaining to the Court of law, if any. This was obviously a reference to the orders made by this Court in both Writ Petition (L) No. 1752 of 2022 and Writ Petition (L) No. 1901 of 2022. This condition was proper, and Mr Samdani has no grievance about the same.

9. Clause 4 of the full OCC dated 18th April 2024 also refers to the pending Writ Petitions and the undertakings furnished by the Petitioners therein. This clause reiterates that the undertakings given by the Petitioners will bind the Petitioners. Again, Mr Samdani has no grievance about such a clause, which was rightly included in the final OCC.

10. On 10 May 2024, the MHADA, without complying with the minimum compliance with principles of natural justice, revoked the earlier OCC dated 18 April 2024 and substituted the same with a Part Occupation Certificate. The occupancy is now only for the floors that meet the height condition imposed on the revised height restriction imposed by the AAI.

11. In issuing the impugned communication dated 10th May 2024, the MHADA has not only breached the principles of natural justice but has also ignored the very specific interim relief granted by this Court in its above-referred order dated 27th January 2022. The revised communication reducing the height was specifically stayed by this Court by observing at least prima facie that the AAI had no power to cancel the earlier NOC permitting a particular height and to substitute by another NOC with retrospective effect by substantially reducing the height permission already granted earlier. The MHADA could not have ignored the stay order or interim relief granted by this Court because, admittedly, such an interim order continues to operate to date. The MHADA could always have clarified that such OCC would be subject to further orders in two pending Petitions. This the MHADA had done in its full OCC dated 18th April 2024.

12. The impugned communication dated 10 May 2024 violates natural justice because none of the Petitioners were heard before the full OCC was revoked on 18th April 2024. Further, the impugned communication contains no reasons for the full OCC's revocation. Besides, as noted earlier, the impugned communication virtually ignores the interim relief granted by this Court on 27th January 2022.

13. For all the above reasons, we quash and set aside the impugned communication dated 10th May 2024 and restore the full OCC dated 18th April 2024, including all the terms and conditions therein. The petitioners must inform the flat purchasers of the

orders made in Writ Petition (L) No. 1752 of 2022 and Writ Petition (L) No. 1901 of 2022 and not claim any equities should those petitions be dismissed.

14. The rule is made absolute in both these Petitions in the above terms. There shall be no orders for costs.

(Kamal Khata, J)

(M. S. Sonak, J)