Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3723 OF 2024

Swan Energy Limited …Petitioner
(Formerly known as Swan Mill Limited)

Versus

The State of Maharashtra & Ors. …Respondents

Mr. Vineet Naik, Senior Advocate a/w Ms. Aditi Bhatt, Mrs. Deeksha Jani, Ms. Haleema Merchant i/b Jani & Parikh, for the Petitioner.

Mr. Ashish Kamat, Senior Advocate a/w Mr. Rohan Savant, Mr. N. Janardhanan & Mr. Dipesh Yadav i/b Shah Legal, for Respondent No.3.

Mr. Atul Vanarase, AGP, for the Respondent Nos.1, 2 & 5–State.

CORAM: MADHAV J. JAMDAR, J.
DATED: 10 SEPTEMBER 2024

P.C.:

1. Heard Mr. Vineet Naik, learned Senior Counsel for the Petitioner and Mr. Ashish Kamat, learned Senior Counsel for the Respondent No.3.

2. By the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 16th April 2024 passed by the Competent Authority *alias* District Deputy Registrar, Co-operative Societies, Mumbai City-1 by which the Application No.33 of 2023 filed by the Respondent No.3 under Section 11 of the Maharashtra Ownership Flats

(Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**") has been allowed.

3. It is the submission of Mr. Vineet Naik, learned Senior Counsel for the Petitioner that the Petitioner has claimed MVAT, Service Tax, GST, and other claims from the flat purchasers. He states that it be clarified that the impugned Order will not be an impediment for recovery of the same as may be competent.

4. Mr. Ashish Kamat, learned Senior Counsel for the Respondent No.3 states that the said clarification is already given in the impugned Order. On instructions, he further states said clarification be given, however, contentions of the parties including the flat purchasers in that behalf be expressly kept open.

5. In view of these contentions, parties have tendered Minutes of Order dated 10th September 2024. The same are taken on record and marked 'X' for identification. Said Minutes of Order read as under:-

> "*1. Heard Parties.*
>
> *2. By consent, rule returnable forthwith.*
>
> *3. Ld. Senior Counsel for the Petitioner on instructions states that the Petition can be disposed off reserving the right to the Petitioner to claim MVAT, Service Tax, GST and other claims by filing proceedings for recovery of the same as may be competent.*
>
> *4. In view of the said Statement, the impugned Order dated 16th April 2024 at Exhibit A passed granting Deemed Conveyance is confirmed. It is clarified that this Order and the*

Impugned Order will not come in the way of the Petitioner's claim for MVAT, Service Tax, GST and other claims and filing proceedings for recovery of the same as may otherwise be competent.

5. In the event if such proceeding is filed by the Petitioner, the same should be decided on its own merits. All the contentions of both the parties on merits of such claims in such proceedings are expressly kept open.

6. With the above clarification, the Writ Petition is disposed of with no order as to costs."

6. Accordingly, the Writ Petition challenging the Order dated 16th April 2024 of the Competent Authority *alias* District Deputy Registrar granting Deemed Conveyance Application, is disposed of by confirming the said Order, subject to clarification as set out herein above.

7. It is clarified that all contentions of the parties including of the flat purchasers with respect to the said claim of MVAT, Service Tax, GST and other claims are expressly kept open.

8. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]