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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 59 OF 2024
IN
INTERIM APPLICATION NO. 486 OF 2024

Dev Engineers ...Petitioner
Versus
The Municipal Corporation of Greater ...Respondents
Mumbai and Anr.

Mr Mukesh Vashi, Senior Advocate, i/b Amarendra Mishra, for
the Petitioner.

Mr Atul Damle, Senior Advocate, a/w Ms Priyanka Sonawane,
for the Respondent-BMC.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 16th August 2024

PC:-

1. Heard learned counsel for the parties.
2. We have perused the affidavit in reply filed on behalf of the 2nd respondent.
3. By our order dated 12 October 2023, in Writ Petition No. 782 of 2023, we granted the petitioner interim relief in

terms of the prayer clause (d) of the petition, which reads as follows:-

“(d) Pending the hearing and final disposal of the present Petition, the effect and implementation of the Impugned Revised LOI dated 09.06.2022 bearing No.R-C/MCGM/0022/20171101/LOI be stayed forthwith.”

4. After such interim relief was granted, it was expected that the BMC would release the TDR indicated in the initial IOD. Still, the BMC avoided doing this on the plea that this Court had stayed the revised LOI dated 09 June 2022; the earlier IOD had not been revived. Accordingly, the petitioner was forced to file Interim Application No. 486 of 2024 in this Court, which was disposed of by order dated 27 February 2024.

5. This order is clear and transcribed below for the convenience of reference:-

“1. On 12th October 2023, we issued Rule and granted ad-interim relief in terms of prayer clause (d) of the Petition. The result of that was that the revised Letter of Intent (“LoI”) of 9th June 2022 was stayed. This necessarily meant and continues to mean that the original letters or LoI that were issued and pursuant to which the entire project has been completed are still in force and hold the field. As we noted in paragraphs 3 and 4 of our order of 12th October 2023, the rethink at this late stage, well after certification of the project as complete, is only because of some accounting query or audit objection. That is surely not a matter that can be allowed to affect the completion of the project or the interests of several dozens or even hundreds persons who have been put in possession.

2. This clarification is sufficient. This also requires that prayer clause (a) of the Interim Application be allowed which is for release of the balance TDR in favour of the

Petitioner in accordance with the LoI dated 10th April 2018 to the extent of 5555.16 sq mts.

3. It goes without saying that if the Petition fails, the rupee value of the Transferable Development Rights ("TDR") at that time will have to be reimbursed by the Petitioner to the Municipal Corporation of Greater Mumbai. This is sufficient protection.

4. The Interim Application is disposed of in these terms.

5. List the Petition as per CIS."

6. Prayer clause (a) of the above Interim Application No. 486 of 2024 reads as follows:-

"(a) that the Respondents be ordered and directed to forthwith release the balance TDR in favour of the Petitioner as per Letter of Intent dated 10.4.2018 (Exhibit "A") admeasuring 5555.16 sq. mtrs."

7. From the reading of paragraph 3 of our order dated 27 February 2024, it appears that the BMC did raise the issue of restitution should the petition fail. This Court held that if the petition fails, the petitioner would have to reimburse the BMC the rupee value of the TDR at that time. This Court held that this would be sufficient protection.

8. Despite clear and definite order, the BMC has now filed an affidavit before us, and paragraph 6 of the affidavit reads as follows:-

"6. I say that thereafter the Improvement Department given recommendation to the Development Plan Department. And the Development Plan Department vide letter u/no. Ch.E./D.P./07625/WS dated 24.07.2024 had now processed for grant of TDR admeasuring 5388.00 sq mt in the name of M/s. Dev Engineers as per recommendation from Dy.Ch.E.(Improvements) vide letter u/no. Dy. Ch. E. (Imp)/543 dated 18.07.2024 and Hon'ble

Municipal Commissioner vide reference u/no. MCP/7189 dated 06.08.2024 has approved the grant of TDR. I further state that, this being compliance pertaining in the order dated 12.10.2023 and 27.02.2024 of this Hon'ble Court and while the decision on Writ Petition is pending, the DRC certificate (subject to condition as stipulated in Exhibit- A colly) will be handed over to the Applicant. In light of the pending in the Writ Petition as aforesaid the Respondents intent to file an Interim Application. Herewith annexed and marked Exhibit-B(Colly) are copies of letters dated 24.07.2024, 18.07.2024 and 06.08.2024.”

9. The affidavit thus suggests that BMC would comply with this Court's directions shortly. However, the affidavit refers to Exhibit 'A, in which the petitioner must submit a security against TDR. Accordingly, considering the orders made in the petition and the Interim Applications therein, including paragraph 3 of our order dated 27 February 2024 disposing of Interim Application No. 486 of 2024, the only security that the BMC can demand is in the form of an undertaking of the petitioner that the petitioner will reimburse the rupee value of the TDR should the petition fail.

10. Mr Vashi learned senior counsel for the petitioner states that such an undertaking would be filed and served upon the BMC within a week from today. Upon proof of filing such undertaking and receiving a copy of the same, the BMC must release the necessary TDR/DRC without any further delay. This entire exercise has gone on too long and, therefore, must now be completed by 30 August 2024.

11. List this Contempt Petition on 04 September 2024 to enable the BMC to report compliance.

12. Mr Damle, learned senior counsel for the BMC, states that upon receipt of the undertaking, the BMC will issue the necessary TDR/DRC but without prejudice to the BMC's right to seek a modification of the orders made by this Court from time to time. The BMC can always issue the necessary TDR/DRC without prejudice, but cannot avoid or delay compliance.

(Kamal Khata, J)

(M.S. Sonak, J)