

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10412 OF 2024

Well Wisher Infra LLP & Anr.	...Petitioners
Versus	
Khopoli Municipal Council & Ors.	...Respondents

Mr. Cyrus Ardeshir, Senior Advocate a/w Mr. Yash Momaya, Ms. Anisha Didwania, Mr. Zaki Ansari i/b. Agarwal and Dhanuka Legal, for the Petitioners.

Mr. Gouresh Mogre i/b. Harshad Bhadbhade, for the Respondent No.1.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE : 5 FEBRUARY 2025

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P.C.:

1. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

- “(b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction calling for the records leading to the issuance of the Impugned Letter dated June 26, 2024 [Exhibit - R], and after considering and examining the validity, propriety and legality thereof, be pleased to quash and set aside the Impugned Observations [set out in Paragraph 3.25 hereinabove] contained in the Impugned Letter; PIS. Sea Rider C.
- (b-1) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction directing Respondent No. 1, KMC to extend the validity of the CC [Exhibit - H] in exercise of power under Section 48 of the MRTP Act;
- (c) That this Hon'ble Court be pleased to issue of a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction directing Respondent No. 2

to allow the Petitioners application for registration of the Project under the provisions of RERA with Respondent No. 2, notwithstanding the Impugned Observations [set out in Paragraph 3.25 hereinabove] contained in the Impugned Letter:

- (d) That this Hon'ble Court be pleased to issue a Writ of Mandamus a Writ in the nature of Mandamus or any other appropriate Writ, order or direction directing the Respondent No. 1, Khopoli Municipal Council to comply with the MahaRERA Order [Exhibit -L] and the GR [Exhibit - M] by addressing an email to the designated email address, mahareracc.raigad@gmail.com, confirming the Commencement Certificate [Exhibit - H];
- (e) In the alternative to Prayer (c), this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction directing MahaRERA to register the Project under the provisions of RERA without any further confirmation or communication from Respondent No. 1, KMC.
- (f) That this Hon'ble Court be pleased to order and direct Respondent No.1, KMC, and Respondent No. 2, MahaRERA, to comply with the GR and MahaRERA Order, and integrate their websites in a time bound manner, and in any event within a period of 3 months;
- (g) That this Hon'ble Court be pleased to order and direct Respondent No.1 – KMC to pay to Petitioner No. 1 interest on the amount of INR 38,76,70,746/- at the rate of 15% per annum from May 17, 2023 till such time as the Project is registered with MahaRERA under the provisions of RERA.
- (g-1) That this Hon'ble Court be pleased to order and direct Respondent No. 1, KMC, to not charge interest to Petitioner No. 1 on the amount of INR 8,85,13,181/-, which would otherwise be payable under Regulation 2.2.14 of the UNDCPR till such time as the KMC renews and confirms the validity of the CC as prayed for in this petition.”

2. We have heard learned counsel for the parties for some time.

Submissions were made on the Commencement Certificate dated 17 May 2023 as issued to the petitioner. From the submissions as advanced on behalf of respondent no.1, it appears that the complete record in regard to

the grant of Commencement Certificate dated 17 May 2023 as issued to

the petitioner is not available with the Respondent – Khopoli Municipal Council. We, accordingly, directed the petitioner to produce the original Commencement Certificate as issued to the petitioner under the signatures of the Chief Officer of respondent no.1. Accordingly, it was so produced. The same is also inspected by the Advocate for the respondent no.1.

3. Mr. Ardeshir, learned Senior counsel for the petitioner submits that a colour photocopy is being furnished to the Advocate for respondent no.1 and the original can always be produced before the present incumbent i.e. the Chief Officer of respondent no.1.

4. In this view of the matter, the learned counsel for the respondent no.1 on instructions has stated that although certain documents (Exh.N page 235) in regard to the petitioner's proposal are submitted to respondent no.1, however, in addition to the same, a fresh set of documents would be furnished and if any other documents are required and which are available with the petitioners the same can be furnished by the petitioners.

5. The learned counsel for respondent no.1 has stated that in this view of the matter, the petitioner can make an application for extension of the Commencement Certificate which will be examined by respondent no.1 as per law and appropriate decision on such extension application shall be taken.

6. Mr. Ardeshir has fairly stated that the petitioner can follow such procedure so that the project is not delayed any further, and a decision on such extension application can be taken by the Municipal Council as all the bonafides of the petitioner are already on record of the respondent no.1.

7. In so far as the petitioner's prayer as made in prayer clause (g-1) is concerned, for an order that respondent no.1 shall not charge interest to the petitioner's on the amount of Rs.8,85,13,181/-, which would otherwise be payable under the Regulation 2.2.14 of the UDCPR till such time as the Khopoli Municipal Council renews and confirms the validity of the Commencement Certificate, in our opinion, is an issue which is required to be considered by the respondent no.1 considering the facts and circumstances of the case. In any event, perusal of Regulation 2.2.14 and clause (B) in option-2 therein, the installment of 20% which is already paid by the petitioner at the time of granting development permission/Commencement Certificate is not in dispute. The interest will be on the balance amount i.e. 80% of the amount which is required to be paid at the time of Occupation Certificate which is to be paid at the interest of 8.5% p.a. The petitioner's contention that the period from 20 April 2024 till the time the extension of the Commencement Certificate is granted ought to be excluded considering the peculiar facts and circumstances of the case.

8. In our opinion, considering the facts and circumstances of the case, the petitioner needs to be granted this liberty to make such application for waiver of the interest in regard to the said period and if such application is made, the same be considered by the appropriate officer considering, peculiar facts and circumstances, which has resulted in delay in receiving the extension/renewal of Commencement Certificate. This, more particularly, as it is a contention of the petitioner that no fault can be attributed to the petitioner in the extended Commencement Certificate being issued to the petitioner. Needless to observe that all such relevant facts would be taken into consideration by the concerned officer in deciding the application of the petitioner for waiver of such period. Thus, keeping open all contentions in that regard, we do not delve on such issue.

9. We may also observe that in the event an extension to the Commencement Certificate is granted to the petitioner, the respondent no.1 within one week of grant of such extension, shall communicate the grant of the Commencement Certificate to the appropriate authority, under the Real Estate (Regulation and Development) Act, 2016. A copy of intimation of the same be also forwarded to the petitioner. Thus, considering the fair position as taken by the parties without examining the merits of the rival contentions, we are of opinion that the petition can be disposed of in terms of the following order:-

ORDER

- (i) Petitioner within one week from today shall furnish a complete set of the documents to the Khopoli Municipal Council in addition to what has been already submitted as Exhibit – N to the petition.
- (ii) The petitioner within 10 days from today shall make an application for extension of the Commencement Certificate (CC) to respondent no.1 which shall be considered by respondent no.1 in accordance with law and a decision in that regard be taken within 45 days of the submission of such application.
- (iii) All contentions of the parties on the proposed waiver application to be submitted by the petitioner are expressly kept open.
- (iv) Petition accordingly stands disposed of. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]