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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 804 OF 2024

IN

EXECUTION APPLICATION (L) NO. 5358 OF 2024

Samartha Development Corporation ... Applicant

In the matter between :

Samartha Development Corporation ... Applicant/
Judgment Creditor

Versus

Municipal Corporation of Greater Mumbai
and others ... Respondents/
Judgment Debtors

.....

Mr. Kunal Dwarkadas alongwith Mr. Shanay Shah, Mr. Amit Mehta, Mr. Danish Quereshi and Mr. Ishaan Jhaveri instructed by Mahimtura and Co., Advocate for the Applicants.

Mr. Rajshekhar Govilkar, Senior Advocate alongwith Ms. Anuja Tirmali and Ms. Jyoti Mhatre, Advocate for the Respondent/BMC.

Ms. Priyanka Acharya alongwith Ms. Vidhi Thaker instructed by Mr. Kunal Bhanage, Advocate for Respondent No.5.

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CORAM : ABHAY AHUJA, J.

DATE : 23 JUNE 2025

P.C. :

1. Pursuant to the earlier orders of this Court, today when the matter is called out, Mr. Dwarkadas, learned Counsel, appears for the Applicants and tenders across the bar an additional Affidavit on behalf

of the Judgment Creditor dated 31st May 2025. Mr. Dwarkadas submits that on 30th April 2025, the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Respondent-Corporation and granted liberty to the Applicants to work out the remedy in the manner known to law in so far as any action taken or proposed to be taken for the alleged subsequent construction *dehors* the original sanctioned plan, if any, by the Respondent-Corporation.

2. Mr. Dwarkadas submits that earlier on 24th January 2025, the Hon'ble Supreme Court had clearly observed that they were not inclined to interfere with the legal issue/principle of law enunciated under the impugned Judgment passed by the Division Bench of this Court dated 7th November 2023, however recording that the Petitioners placing reliance on the assessment order had submitted that constructions have been made by the Respondents therein (the Applicants herein) beyond the date of issuance of the commencement certificate and the said constructions continued after 2010 amendment to the Maharashtra Regional and Town Planning Act, 1966 (the “**MRTPA Act**”), which fact was disputed by the learned Counsel appearing for the Applicants herein. By the said order, the Petitioners therein as well as the Respondents therein were directed to file Affidavits with regard

to the aforesaid objections.

3. Mr. Dwarkadas would submit that it is after considering the Affidavit in reply and rejoinder filed in accordance with the said order dated 24th January 2025 that the Hon'ble Supreme Court has dismissed the Special Leave Petition granting liberty to the Applicants herein to work out the remedy on any action that is taken or proposed to be taken by the Corporation. Mr. Dwarkadas submits that therefore the stay granted earlier to the execution proceedings also stands vacated. Drawing this Court's attention to Exhibit "D" on page 119 to the additional Affidavit, Mr. Dwarkadas submits that as upto 30th June 2025 alongwith interest the excess amount to be refunded to the Applicants is Rs.4,72,18,843.96 and that this Court may either direct attachment of the assets of the Municipal Corporation of Greater Mumbai or payment of the said amount to the Applicants.

4. On the other hand, Mr. Govilkar, learned Senior Counsel appearing for the Corporation also taking this Court through the two orders of Hon'ble Supreme Court one dated 24th January 2025 and the other dated 30th April 2025 submits that in view of the order dated 30th April 2025, the order dated 7th November 2023 passed by this Court stands modified and that therefore until and unless any steps are taken by the Applicants herein in terms of the order dated 30th April 2025 of

the Hon'ble Supreme Court, the Execution Application and the connected Interim Application would have to be kept pending.

5. Mr. Govilkar submits that the aspect of the constructions made by the Applicants herein beyond the date of issuance of the commencement certificate was also an aspect decided by the Division Bench of this Court and until and unless that issue is decided, the decree cannot be satisfied and therefore, the learned Senior Counsel urges this Court to await the outcome of the steps taken by the Applicants, if any.

6. I have heard the learned Counsel as well as the learned Senior Counsel in the matter.

7. On 7th November 2023, a Division Bench of this Court had in the Writ Petition No.954 of 2013 considered the dispute between the Applicants and the Respondent-Corporation with regard to levying of development charges based on the 2010 amendment to the MRTP Act.

8. After considering the provisions of the MRTP Act and the submissions of the learned Counsel for the Applicants and the Respondent, the Division Bench of this Court, after noting the prayers in the Writ Petition, which sought refund of the development charges illegally collected, issued directions to the Respondent-Corporation for refund of the excess development charges after deducting the

development charges at the then prevailing rate at the rate of Rs.500/- sq.ft. from the amount paid by the Applicants to the Respondent-Corporation under the protest for issuance of the occupation certificate.

9. The Hon'ble Supreme Court has after recording submissions on this aspect on 24th January 2025 and after considering the Affidavits filed on behalf of the parties, on 30th April 2025 passed the following order :

“In terms of the earlier order dated 24.01.2025, no further orders are required. However, liberty is given to the respondents to work out the remedy in the manner known to law insofar as any action taken or proposed to be taken for the alleged subsequent construction dehors the original sanctioned plan, if any.

The Special Leave Petition is dismissed accordingly.

Pending application(s), if any, shall stand disposed of.”

10. The Hon'ble Supreme Court, as can be seen, has recorded that in terms of the earlier order dated 24th January 2025, no further orders are required. In order dated 24th January 2025, the Hon'ble Supreme Court before recording the submissions of the parties on the constructions after 2010 amendment to the MRTP Act, clearly observed that they were not inclined to interfere with legal issue/principle of law enunciated under impugned Judgment of the Division Bench of this Court dated 7th November 2023. The Hon'ble Supreme Court while dismissing the Special Leave Petition filed by the Respondent-

Corporation challenging the Division Bench Judgment has granted liberty to the Applicants to take recourse to any remedy, if any action is taken or proposed to be taken for the alleged subsequent construction *dehors* the original sanctioned plan, by the Respondent-Corporation.

11. It has been submitted before this Court on behalf of the Corporation that until and unless any action is taken by the Applicants, the decree could not be satisfied as the Hon'ble Supreme Court has sought to modify the Judgment of the Division Bench by granting the liberty. I am afraid the said submission cannot be countenanced either in law or in fact. The Hon'ble Supreme Court had considered the Judgment of the Division Bench which was considering refund of excess development charges and has clearly held in its order dated 24th January 2025 that they were not inclined to interfere with the legal issue/principal of law enunciated under the impugned Judgment. The liberty on 30th January 2025 while dismissing the Special Leave Petition has been granted to the Applicants against any action that has been taken or proposed to be taken by the Corporation. It cannot lie in the mouth of the Corporation to say that until and unless any action or any Petition is filed by the Applicants herein, the decree would remain unsatisfied or that the Hon'ble Supreme Court has modified the Judgment by giving the liberty.

12. Mr. Dwarkadas has drawn this Court's attention to Exhibit "D" on page 119 of the additional Affidavit which contains the working of the amount with interest to be paid to the Applicants. There is no dispute with respect to the said computation. Attaching the assets of the Corporation would not serve any useful purpose. Accordingly this Court directs the Respondent-Corporation to pay Rs.4,72,18,843.96 to the Applicants within a period of four weeks alongwith accrued interest, subject to arithmetical verification.

13. It goes without saying that the liberty granted by the Hon'ble Supreme Court vide order dated 30th April 2025 would always be available in so far as any action taken or proposed to be taken for the alleged subsequent construction *dehors* the original sanctioned plan, if any.

14. The Execution Application as well as connected Interim Application accordingly stand disposed.

15. List for compliance on **21st July 2025**.

(ABHAY AHUJA, J.)