



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 13458 OF 2023

M/s. S.K. Realty

(formerly known as “Aum Developer”)
605, Karim Manzi, JSS Road, 2nd floor,
Off Princess Street, Mumbai – 400 002

.. **Petitioner**

Versus

1. State of Maharashtra

(through Housing Department)
Mantralaya, Mumbai.

**2. Maharashtra Housing and Area Development
Authority (MHADA)**

MHADA, Grihnirman Bhavan, Kalanagar,
Bandra (E), Mumbai – 400 051.

**3. Mumbai Building Repairs & Reconstruction
Board (MBRRB)**

MHADA, Grihnirman Bhavan, Kalanagar,
Bandra (E), Mumbai – 400 051.

**4. CEO, Maharashtra Housing and Area
Development Authority (MHADA)**

MHADA, Grihnirman Bhavan, Kalanagar,
Bandra (E), Mumbai – 400 051.

**5. Vice President, Maharashtra Housing and
Area Development Authority (MHADA)**

MHADA, Grihnirman Bhavan, Kalanagar,
Bandra (E), Mumbai – 400 051.

.. **Respondents**

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- Mr. Mayur Khandeparkar a/w. Ms. Apurva Gupta and Mr. Parth Jasani i/by M/s. Purnanand & Co. for Petitioner.
 - Mr. Amit Shastri, AGP for Respondent No.1 – State.
 - Mr. P.G. Lad a/w. Ms. Sayli Apte, Advocates for Respondent Nos.2 to 5 – MHADA.

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CORAM : MILIND N. JADHAV, J.
RESERVED ON : DECEMBER 20, 2023
PRONOUNCED ON : JANUARY 02, 2024

JUDGMENT:

1. Heard Mr. Khandeparkar, learned Advocate for Petitioner; Mr. Shastri, learned AGP for Respondent No.1 – State and Mr. Lad, learned Advocate for Respondent Nos.2 to 5 – MHADA.

2. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India by the Petitioner (for short “Developer”) taking exception to the order dated 14.09.2022 passed by the 2nd Appellate Authority i.e. Respondent No.1 in Appeal No.16 of 2021.

3. Developer filed the Appeal against the order dated 27.02.2019 whereby the Application / proposal dated 05.10.2016 filed by the Developer before the Vice President & Chief Executive Officer / Authority of MHADA for considering the eligibility of Room Nos.3, 4 and 5 of the Outhouse situated in the premises of the subject property being Wadia House, Gilder Lane, Near Tardeo Bridge, Mumbai – 400008, as separate units to be certified as tenants and grant of revised NOC for redevelopment of the subject property with FSI 3.00 was rejected.

4. Developer was informed about the said rejection by letter dated 27.02.2019. Developer would submit that the impugned order passed by the 2nd Appellate Authority in Appeal No.16 of 2021 against the aforementioned order of rejection of Developer's

applications/proposals is passed by the Principal Secretary, Housing Department, Government of Maharashtra as the 2nd Appellate Authority.

5. Developer has challenged the impugned order passed by the 2nd Appellate Authority on various grounds of merit, *inter alia*, for considering the documentary evidence placed on record by the Developer for considering eligibility of Room Nos.3, 4 and 5 of the Outhouse in the subject property as certified tenants / occupants, however one of the ground enumerated in the Petition namely ground in paragraph No.4.16 states that the impugned order is vitiated by serious breach of principles of natural justice, in as much as the Vice President & Chief Executive Officer / Authority of MHADA who has considered and rejected the Application / proposal letters dated 05.10.2016, 18.04.2017, 22.05.2017 and 19.06.2018 submitted by the Developer vide order dated 27.02.2019 is the same person who has passed the impugned order dated 14.09.2022 as the 2nd Appellate Authority.

6. The order dated 27.02.2019 is appended at Exhibit – J and the impugned order dated 14.09.2022 is appended at Exhibit – P to the Petition.

7. Mr. Khandeparker, learned Advocate appearing for the Petitioner – Developer would submit that both the aforementioned

orders; firstly rejection of Application / proposal and secondly dismissal of the Appeal No.16 of 2021 have been passed by the same person. It is submitted that the Appellate Authority who has passed the impugned order is the same person that has passed the order of rejection of the proposal which was appealed against by the Developer before the Appellate Authority.

8. Before proceedings any further on merits, Mr. Lad, learned Advocate appearing for the Respondent Nos.2 to 5- MHADA would submit that a detailed Affidavit-in-reply dated Nil.09.2023 and notarized on 11.10.2023 on merits has been filed by the Respondent No.2 - MHADA to oppose the Petition. He has however straight away drawn my attention to paragraph Nos.23 and 24 of the Affidavit-in-reply which read thus:

“23. I say that the main contention of the Petitioner is that the Vice President and CEO, MHADA who has decided the First Appeal against which second Appeal is preferred before the Housing Department is the same person i.e. Vice President and CEO, MHADA as well as Housing Department is same person, who cannot hear the appeal against his own Order. I say that the said fact was not pointed out by the Petitioner at the time of hearing of the Second Appeal by the Housing Department.

24. I say that in fact Order dated 27th February, 2019 is not signed by the Chief Executive Officer, but however in the last paragraph of the said Order it was mentioned that the matter was placed before the Vice President and CEO, MHADA and as per the directions of Vice President and CEO, MHADA the application is rejected. I say that the Petitioner may have some case on technicality, however, for the reasons stated above, the application for declubbing cannot be permitted. ”

9. From the above it is seen that it is Respondent's contention also that both the Authorities who passed the order of rejection on the Developer's Application / proposal and the 2nd Appellate Authority are the same and incidentally this fact was not pointed out by the Developer at the time of hearing of the 2nd Appeal. Perusal of the impugned order shows that the 2nd Appeal was heard on 24.01.2022 through video conference and the impugned order was passed on 14.09.2022 and the same was conveyed to the Developer by a covering letter dated 23.11.2022.

10. In view of the above, Mr. Lad in his usual fairness has admitted that the Authority who has passed the impugned order is the same Authority who was earlier the Vice President & Chief Executive Officer / Authority of MHADA who has rejected the Application / proposal for eligibility of the Developer. He would therefore submit that this Court be pleased to pass appropriate directions without touching the merits of the matter since, if any merits are gone into by this Court, it may have an adverse effect on the adjudication of the 2nd Appeal afresh by the 2nd Appellate Authority. Mr. Lad's suggestion is fair and I am inclined to accept it.

11. In view of the above observations and findings, the impugned order dated 14.09.2022 passed by the 2nd Appellate Authority in Appeal No.16 of 2021 is quashed and set aside. As a

consequence Appeal No.16 of 2021 is directed to be heard afresh by the 2nd Appellate Authority strictly in accordance with law by keeping all contentions of the parties viz. Developer and Respondents expressly open for adjudication.

12. Developer and Respondents are permitted by this Court to file any additional submissions and documents in support of their respective case which the 2nd Appellate Authority shall accept and consider the same, if so filed, strictly in accordance with law.

13. While adjudicating the Appeal, the 2nd Appellate Authority shall taken into cognizance the contents of Government Resolution No.MISC.-2016/C.R.29/R&R-1-Mantralaya,Mumbai – 400 032 dated 08.03.2019 issued by the Under Secretary, Housing Department, Government of Maharashtra, prescribing the procedure for determining the eligibility of tenants / occupants in cessable buildings and the area permissible to them alongwith the 3rd Schedule of the Maharashtra and Area Development Act, 1976.

14. However, considering the timeline involved in the present case and the fact that the redeveloped building is almost ready, the issue at hand not only requires to be determined expeditiously but also strictly in accordance with law.

15. It is seen that as per the NOC dated 07.08.2004 one of the condition of the NOC is to handover surplus built-up area admeasuring

264.13 sq. meters to the Respondent No.3 – MBRRB. However, the controversy has arisen as clause 20 of the NOC has not been considered by the Respondents and despite completion of the building and the Developer approaching the Competent Authority since the year 2015 onwards, the said issue is still undecided. It is Developer's contention that if the Developer is in a position to prove all such relevant documentary evidence in respect of the 3 subject rooms, which is the contentious issue as having existence prior to the *datum* line then the occupancies of the said rooms have to be considered and certified. Annexures to the Petition as also pleadings clearly show that substantial documents have been placed on record to overcome the above issue and seek eligibility. However, as per the Respondents the aforesaid proposal raised by the Developer stood rejected.

16. It is pertinent to note that in the order dated 27.02.2019, the Chief Officer of the Respondent No.3 has intimated the Developer that as per the directions of the Vice President & Chief Executive Officer / Authority of MHADA, the Application / proposal is rejected. Save and except this reason, no other reasons are given by the Vice President & Chief Executive Officer / Authority of MHADA. All that the order dated 27.02.2019 would further state is about the issue raised by the Developer.

17. Mr. Khandeparkar has also drawn my attention to a further

letter dated 15.11.2019 which calls upon the Developer to file 2nd Appeal before the 2nd Appellate Authority. That is filed. Be that as it may, and without commenting on the merits of the matter, the 2nd Appellate Authority is directed by this Court to consider all such grievances raised by the Developer in the 2nd Appeal No.16 of 2021 and decide the said Appeal afresh within a period of 4 months from today and pass a reasoned order after hearing all concerned parties.

18. In the meanwhile, no coercive steps shall be taken against the Developer in respect of Preliminary Inquiry No.3 of 2023 initiated by the Economic Offences Wing until the aforesaid Appeal is adjudicated and decided by the 2nd Appellate Authority.

19. In the event if the 2nd Appellate Authority is the same who has passed the order of rejection of the Developer's proposal dated 27.02.2019 , appropriate steps shall be taken by the Respondent No.1 – State Government in accordance with law to constitute / delegate the power of the 2nd Appellate Authority for hearing the 2nd Appeal No.16 of 2021 as directed by this Court.

20. All contentions of the parties are expressly kept open.

21. With the aforesaid directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]