

HARSHADA H. SAWANT
(P.A.)

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

WRIT PETITION (L) NO.17586 OF 2023

M/s. Rachana – Astra Construction Pvt. Ltd. .. Petitioner

Versus

State of Maharashtra and Ors. .. Respondents

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- Mr. Sharan Jagtiani a/w. Mr. Anoshak Daver and Ms. Deepa Pohuja i./by J Law Associates, Advocates for Petitioner.
- Mr. M. A. Saiyed, AGP for Respondent Nos.1 and 2.
- Mr. Abhishek Upadhyay, Advocate for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 14, 2023

P.C.:

1. Heard Mr. Jagtiani, learned Advocate for Petitioner, Mr. Saiyed, learned AGP for Respondent Nos.1 and 2 and Mr. Upadhyay, learned Advocate for Respondent No.3.

2. At the outset Mr. Jagtiani would submit that he seeks leave to amend the Petition and place on record Resolution dated 14.06.2023 of the Respondent No.3 – Society. He would submit that said document is already referred to in the Petition but the Petitioner inadvertently could not file the said document. He would submit by omission they could not place the Resolution in the Petition and therefore seeks leave of the Court to append the said Resolution to the Petition. Leave to amend and place the Resolution on record is granted. Necessary amendment be carried out within a period of one

week from today. Re-verification stands dispensed with. Copy of the amended Petition shall be re-served on the Society and other Respondents by the Petitioner.

3. Mr. Jagtiani has taken me through the facts of the present case. Though the Petition takes exception to the impugned order dated 12.06.2023, it has been brought to my notice that the Competent Authority had closed the matter for orders on 02.05.2023 on which date the learned Advocate for the Petitioner could not remain present as he was late by half an hour for the hearing. On 11.05.2023, an Application seeking to recall the order dated 02.05.2023 was filed by the Petitioner before the Competent Authority which has not been decided at all.

4. That apart, Mr. Jagtiani would submit that there is a prior Suit of the year 2018 filed by the Petitioner against the Society and the Municipal Corporation in the Bombay City Civil Court wherein certain ad-interim injunctive reliefs have been passed. He would submit that there is reference to this proceeding in the impugned order but the consequence of this pending Suit and the ad-interim order passed therein has not been considered by the Competent Authority while passing the impugned order. He would submit that the Petitioner has a right to develop the 11th and 12th Floor of the building of the Society, which has been completely transgressed by the impugned order. That it is a substantive right. I have also seen the Resolution of the Society

dated 14.06.2003, which is passed 2 days after the grant of order of deemed conveyance. I will deal with the same after the reply of the Society is filed.

5. Let the Respondents file their Affidavit-in-reply within a period of two weeks from today. Rejoinder, if any, to be filed within a week thereafter. It is expected for the Respondents to clarify the aforementioned position as argued by Mr. Jagtiani and place all such relevant material on record. Learned AGP shall also obtain appropriate instructions and file reply as directed.

6. I have heard the learned Advocates for the parties. I was about to pass ad-interim relief, but Mr. Upadhyay, learned Advocate appearing for Respondent No.3 - Topiwala Center Premises Co-operative Society Limited in the present Petition has persuaded me not to pass any order and makes a statement that the Society shall not take any further steps in respect of execution and registration of the Deemed Conveyance and also in the interregnum not address any letters to the Municipal Corporation of Greater Mumbai and raise any objections with respect to the Petitioner's entitlement to further construct on the 11th and 12th floor, until the present Petition is heard for admission. Mr. Upadhyay's statement is accepted by the Court.

7. Stand over to **04th August, 2023.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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Date: 2023.07.15
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