

SUPREME COURT OF INDIA

City & Industrial Development Corporation of Maharashtra Ltd.

Vs.

Lambda Therapeutic Research Ltd.

C.A.No.8443 of 2019

(R.Banumathi,J., A.S.Bopanna and Hrishikesh Roy,JJ.,)

06.11.2019

JUDGMENT

A.S.Bopanna,J.,

SLP (Civil)No.8864 of 2019

1. Leave granted.

2. The appellant- City and Industrial Development Corporation of Maharashtra Ltd., ('CIDCO' for short) is before this Court in this appeal assailing the order dated 29.08.2018 passed by the High Court of Judicature at Bombay in W.P.No.12674 of 2017. The said order was passed in the writ petition instituted by the respondents No.1 and 2 herein " claiming to be aggrieved by the letter dated 20.04.2016, (signed on 01.07.2016) issued by the appellant herein to the Page 1 of 18 respondent No.3 herein requiring them to pay the sum of Rs.14,05,60,587/- (Rupees Fourteen Crores, Five Lakhs, Sixty Thousand, Five Hundred and Eighty Seven) towards additional lease premium up to 30.03.2007 so as to process the request of respondent No.3 for grant of 'No dues Certificate' in their favour which in turn was required to secure Occupation Certificate in respect of the building, from respondent No.4. The High Court having considered the matter has quashed the demand made through the impugned letter dated 20.04.2016/01.07.2016 and has directed the appellant herein to issue 'No dues Certificate'. The High Court has further directed the respondent No.4 herein to process the application for Occupation Certificate. The appellant is therefore, aggrieved by the order impugned herein.

3. The brief facts leading to the present situation is that the appellant herein allotted plot bearing No.7, Sector 15, CIDCO, Belapur, Navi Mumbai, measuring 3176.25 sq.mtrs to M/s Mehak Developers Pvt. Ltd., the respondent No.3 herein in terms of the New Bombay Disposal of Land Regulations, 1975. The said allotment was governed by the terms and conditions contained in the Agreement of Lease dated 04.08.1995. The construction was required to be completed by the respondent No.3 as per the time frame agreed including the extended time period. Not putting up the construction within the time frame agreed was

to attract payment of additional lease premium retrospectively from 06.08.2001 as per the agreed terms. The fact that the respondent No.3 completed construction of 'A' Wing of the building known as Arneja Chambers II within the initially extended period i.e. 31.12.2005 is not in dispute.

4. The issue that has given rise to the instant dispute between the parties is relating to the construction put up as 'B' Wing of Arneja Chambers II, in the residual area. In that regard, the fact remains that as per time extended for completion of the construction, the same was to be completed on or before 31.12.2008. Though the respondents No.1 and 2 herein who were the writ petitioners before the High Court and respondent No.3 herein have sought to contend that the construction was complete in all respects prior to 31.12.2008 and, therefore, they are entitled to seek for issue of 'No dues Certificate' so as to secure the occupancy certificate without levy of the additional lease premium, the case of the appellant herein is that the construction as required had not been completed except for creation of certain documents in the nature of completion certificate dated 24.12.2008. The appellant contends that the respondent No.3 was, therefore, liable to pay the additional lease premium retrospectively from 06.08.2001 and as such the communication dated 20.04.2016/01.07.2016 was issued to respondent No.3 which is in accordance with the terms of allotment. It is the further contention on behalf of the appellant that there is no privity of contract between the respondents No.1 and 2 herein on the one hand and the appellant on the other. As such, in respect of the said communication issued to respondent No.3 the respondents No. 1 and 2 cannot raise any grievance. It is contended that the writ petition therefore ought not to have been entertained.

5. In the above background, we have heard Mr. Ajit S. Bhasme, learned senior advocate for the appellant, Mr. Shyam Divan, learned senior advocate for respondents No.1 and 2, Mr. V. Giri, learned senior advocate for respondent No.3 and Mr. Suhas Kadam, learned advocate for respondent No.4. We have perused the appeal papers.

6. As noted, there is no dispute between the contesting parties with regard to the allotment of plot made by the appellant in favour of the respondent No.3, the completion of the construction of 'A' Wing of the building Arneja Chambers II within the initial extended period i.e. 31.12.2005 and the permission having granted by the appellant to the respondent No.3 for putting up construction of the 'B' Wing of the building Arneja Chambers II in the residual area. The extension of time for completion of construction of 'B' Wing being granted upto 31.12.2008 is also not in dispute. The issue which however engages the consideration of the Court is as to whether in the present circumstance the demand for additional lease premium amounting to Rs.14,05,60,587/- in the manner as has been demanded through the communication dated 20.04.2016/01.07.2016 is justified and as to whether the challenge to the same could have been raised by the respondents No.1 and 2 herein. The question ultimately is, in that background whether the High Court was justified in quashing the said communication as a final conclusion and directing issue of 'No dues Certificate' more so when the respondents No.1 and 2 herein were before the Court in that regard, while the demand contained therein was made against the respondent No.3 and they had not assailed the same.

7. The learned senior advocate for the appellant has at the outset contended that there being no privity of contract between the appellant and the respondents No.1 and 2, the respondents No.1 and 2 had no locus to assail the communication dated 20.04.2016/01.07.2016 issued to respondent No.3. The learned senior advocate representing respondents No.1 and 2 would however seek to contend that the respondent No.3 after having obtained the allotment of the plot as also approval and extension of the period for construction had completed the construction as on 31.12.2018 and in that view the respondents No.1 and 2 had purchased the 'B' Wing of the building Arneja Chambers II under the Sale Deed dated 16.06.2011 for a consideration of Rs. 7,21,00,000/- (Rupees Seven Crores Twenty-One Lakhs). In that regard a sum of Rs. 7,01,00,000/- (Rupees Seven Crores One Lakh) was paid to respondent No.3 and a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) was deposited in terms of the mutual understanding between the parties. In such circumstance the respondents No.1 and 2 being a bonafide purchaser for valuable consideration had interest in the property in issue and since the regulations required issue of 'No due Certificate' for securing the Occupation Certificate the respondents No.1 and 2 were left with no other alternative but to approach the High Court and seek for the relief as has been done. The learned senior advocate for respondent No.3 would support the contention of respondents No.1 and 2 and contended that as respondent No.3 was arrayed as a party to the petition and the contention on their behalf was also available before the Court, the writ petition being entertained by the High Court was in accordance with law.

8. Having adverted to the said contention we find that essentially it is no doubt true that there is no privity of contract between the appellant and the respondents No.1 and 2 herein if looked at in technical terms. However, what cannot be lost sight is that the construction in question is put up by the respondent No.3 on a plot allotted by the appellant and such building constructed has been purchased by the respondents No.1 and 2 under registered Sale Deed dated 16.06.2011 for a valuable sale consideration. In that circumstance the respondents No.1 and 2 are desirous of occupying the building. Though the right in that regard in a normal circumstance is to be exercised and the specific performance for possession with Occupation Certificate is to be enforced against the respondent No.3 who is their vendor, the respondent No.4 which is the statutory authority for issuing the Occupation Certificate was also arrayed as a respondent. The respondents No.1 and 2 while seeking appropriate directions against the respondent No.4, having noticed that the impugned communication would come in their way of securing Occupation Certificate have chosen to assail the same.

9. Further the covenant contained in the Sale Deed dated 16.06.2011 between respondents No. 1 and 3 in para 6 (G) creates an inter-se liability on mutual understanding with regard to the costs incurred for securing 'No dues Certificate' from appellant which reads as hereunder;

“The Purchasers have deposited in escrow the a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) with M/s. Khaitan & Jayakar, Advocates & Solicitors, which will be released to the Developers as and when the Developers obtain the

Occupancy Certificate for the said premises from the NMMC and upon receipt of approval for extension of time period, and consequent issue of No dues Certificate from CIDCO. The costs incurred for receipt, of approval for extension of time; period which shall lead to issue of no dues Certificate from CIDCO shall be borne by the Developers and the Purchasers equal proportions.”

Therefore, if the said aspect of the matter is kept in view the respondents No.1 and 2, to the limited extent can be considered as aggrieved persons for examination of their contention to the limited extent. The contentions to indicate that the construction was completed before 31.12.2008 and that respondent No.3 is therefore not liable to pay the amount indicated in the impugned communication cannot however be accepted at the instance of respondents No.1 and 2 since the fact of completion of construction within the time frame is to be established by respondent No. 3 alone. Hence the further examination herein is to be made keeping in view this aspect as well.

10. Having arrived at the above conclusion what is required to be taken note is that the respondent No.3 herein had submitted an undertaking dated 19.05.2004 which reads as hereunder:

“UNDERTAKING

We M/s. Mehak Developers undertake to apply for occupancy certificate for plot no.7, Sector 15, C.B.D. by 31.12.2005 to N.M.M.C. failing which we undertake to pay additional lease premium as applicable from 06.08.2001 for the area for which the occupancy has not been applied for. For Mehak Developers, (Proprietor)

Add:- 507, Sharda Chambers,
15, New Marine Lines,
Mumbai - 400 020.”

11. Though the period for completion indicated in the undertaking is 31.12.2005, the undisputed position is that the time has been extended upto 31.12.2008 and the issue is as to whether the respondent No.3 has in fact completed the construction within the said period and whether that will be sufficient to avoid the levy of additional lease premium. The extension was granted through the communication dated 31.07.2007 (Annexure P6). The said extension is in terms of the Regulations 6 and 7 contained in Regulations of 1975 which read as hereunder:

Regulations-6

“Completion of building, factory, structure or other work within the prescribed time - The Lessee shall complete building, factory structure or other work for which the land has been granted within the time prescribed by the Managing Director.”

Regulation - 7

“Permission for extension of time - If the Intending Lessee obtains development

permission and commences construction accordance with the conditions of agreement to lease made between him and the Corporation but has been unable to complete the construction within the time stipulated in the agreement to lease for reasons beyond his control, the Managing Director may permit extension of time for completion of buildings, factory, structure or other work on payment of additional premium.”

12. The respondent No.3 has relied on the completion certificate dated 24.12.2008 issued by the architects addressed to the respondent No.4 herein. Though the respondent No.3 has sought to rely on the same, what is required to be taken note is the communication dated 09.02.2009 addressed by the respondent No.4 to respondent No.3 indicating the requirement to be complied for grant of occupancy certificate. What is inter alia sought therein is ‘No dues Certificate’ from the appellant to be submitted to respondent No.4. The same would indicate that the respondent No.3 herein though claimed to have completed the construction before 31.12.2008 had only sought for issue of ‘No dues Certificate’ from the appellant herein through the communication dated 11.08.2010. Subsequently, a letter dated 31.01.2011 was issued, whereafter the reminder dated 04.05.2013 was sent by respondent No.3 to the appellant seeking for ‘No dues Certificate’. In the said reminder dated 04.05.2013 reference is made to the occupancy certificate obtained for 78 per cent of the FSI which relates to ‘A’ Wing and it has been indicated therein that the balance 22 per cent was completed by 31.12.2008. It is in reply to the said letter the impugned communication dated 20.04.2016/01.07.2016 was issued.

13. In the present circumstance from what has been narrated above it is noticed that there is lacuna in the manner in which the appellant has also dealt with the matter. However, neither the High Court nor this Court while exercising the limited jurisdiction of judicial review can enter into the factual aspects to determine whether the construction in fact had been completed prior to 31.12.2018 before a decision is taken on that aspect by the appellant, based on the available records and spot verification if need be. This is more so when that aspect of the matter is disputed by the appellant herein. The respondents no doubt have relied on the completion certificate dated 24.12.2008, which as already taken note has been addressed to the respondent No.4 and the copy of the same has been furnished to the appellant while making a request for issue of the ‘No dues Certificate’. Essentially when the plot was allotted on certain conditions and the same stipulated completion of the construction in a time frame to avoid liability and when the statutory provisions required the ‘No dues Certificate’ from the appellant so as to seek occupancy certificate from the respondent No.4 the primary procedure is for the respondent Page 13 of 18 No.3 to submit necessary documents to the appellant to establish that the construction is put up within the time frame stipulated and to indicate that they are not liable to pay any additional lease premium. In the instant case we do not find that such procedure has been complied with. Even if the requirement was not complied and if the appellant was entitled to levy the additional lease premium the same was required to be done by adopting an appropriate procedure. Hence to that extent the observations of the High Court that the Principle of Natural Justice has not been complied by the appellant is justified. However, such lapse in procedure was not sufficient to nullify the demand in absolute terms. The High Court, in our view, shall have issued direction to the appellant

Corporation to follow appropriate procedure in that regard and pass a reasoned order.

14. Further, we take note that the demand made in the impugned communication is for the period till 30.03.2007 though it is contended by the appellant that the construction has not been completed as on 31.12.2008 nor would the communication indicate as to when according to them the construction was completed. That apart though certain details were indicated with regard to the construction in the reminder letter dated 24.05.2013, in response to which the impugned communication is issued, there is no reference to the details therein. Hence, despite the manner in which the impugned communication dated 20.04.2016/01.07.2016 issued not being sustainable and the quashing of the same as made by the High Court is justified, the appropriate course that ought to have been followed by the High Court is to remit the matter to the appellant herein by directing them to provide opportunity to the respondent No.3 to file necessary documents in support of the completion certificate dated 24.12.2008 issued by the Architect so as to enable the appellant to make a factual determination and to arrive at an appropriate conclusion afresh by taking into consideration all aspects of the matter. Hence in that view it would be appropriate for us to order accordingly.

15. Notwithstanding the said conclusion what cannot be overlooked is also the fact that the respondents No.1 and 2 who had made a sizeable investment to purchase the property are the ones who would be ultimately affected and when a discretionary jurisdiction is being exercised by this Court the equities are also required to be worked out and balanced so as to protect the interest of all parties before the Court in the meanwhile. Hence pending such reconsideration an avenue is to be created for the respondent No.4 to issue the occupancy certificate so as to enable the respondents No.1 and 2 to occupy and at the same time the interest of the appellant is also required to be secured.

16. Therefore, pending reconsideration of the matter by the appellant, the respondents No.1 to 3 shall either jointly or severally deposit a sum of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs) with the appellant towards provisional additional lease premium which would be subject to final decision. On the said amount being deposited the appellant shall issue a provisional 'No dues Certificate' limited for the purpose of enabling respondent No.3 to secure the occupancy certificate from the respondent No.4. On such provisional 'No dues Certificate' being submitted to the respondent No.4, the respondent No.4 shall process the application for issue of occupancy certificate for the 'B' Wing of the building Arneja Chambers II.

17. Insofar as the claim of the appellant for an additional lease premium in the event of the respondent No.3 does not satisfy the construction was completed before the 31.12.2008, the appellant shall provide opportunity and pass fresh orders in that regard. If the appellant is satisfied that the construction is completed in terms of the extension granted and if it is found they are not liable for the levy of additional lease premium the amount of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs) as indicated above shall be returned to the parties who deposits the same. On the other hand, on determination it is concluded that the respondent No.3 is due to pay any additional lease premium, the appellant would be

entitled to recover the same from the respondent No.3 and until the said aspect attains finality, there shall be charge over the property purchased by respondents No.1 and 2. Ultimately if the amount is held to be due from the respondent No.3 and if the same is not paid, the appellant will have the liberty of withdrawing the provisional “No dues Certificate” issued pursuant to the direction of this Court and intimate respondent No.4 in that regard for appropriate action. Needless to mention that if the interim amount of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs) is deposited by respondents No.1 and 2, they would be entitled to work out their inter-se right against respondent No.3.

18. The appeal is accordingly allowed in part, in terms of the observations and directions contained in para 16 and 17 supra. It is made clear that we have not expressed any opinion on the merits of the matter. There shall be no order as to costs. All pending applications shall stand disposed of.