



(22) WP 2326.2024(F)

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 2326 OF 2024(F)

M/s Sunstar Homes,
A Partnership firm registered,
under the Indian Partnership Act,
Having its principal place of business
at Mezzanine floor, National Chemist and
Druggist, Narvekar Chambers,
Mapusa, Bardez, Goa, 403507.
Represented through its partner
Mr. Anup Vishram Prabhu Walavalkar,
Age 51, married, business, Indian National,
Office at Narvekar Chambers,
Above National Chemists and Druggist,
Mapusa, Bardez - Goa.

... PETITIONER

Versus

- 1) Mr. Irappa L. Patil,
About 34 years of age,
Indian National, married,
- 2) Mrs. Savita L. Patil,
Major of age, married,
Indian National,
Both r/o. H. No 32/A,

Santiganwado, Khorlim,
Mapusa, Bardez,
Goa, 403507.

- 3) Mr. Mahmdarafi Jangalisab Hosamani,
Major of age, married,
Indian National, and
- 4) Mrs. Tabasum Mahmdarfi Hosamani,
Major of age, married,
Indian National,
Both r/o. Flat no. 507,
C Block, 7th Floor,
Kim Heights Morod,
Mapusa, Bardez, Goa, 403507.
- 5) Mr. Hanumant Mahadev Patil,
Major of age, married,
Indian National, and
- 6) Mrs. Savita Hanumant Patil,
Major of age, married,
Indian National,
Both r/o Flat no. 507,
C Block, 7th Floor,
Kim Heights Marod,
Mapusa, Bardez, Goa, 4033507.
- 7) Mr. Bhushan Vishnu Bordekar,

Major of age, unmarried,
Indian National,
R/o H. No. 69/1, Bailpur
Casarvornem, Pernem, Goa, 403512.

8) Mr. Ratnesh Sadavraksh Prasad,
Major of age, unmarried,
Indian National,
R/ H. No. 69/1, Bailpur Casarvornem,
Casarvornem, Pernem, Goa, 403512.

9) Mr. Vivek Arjun Naik Tulaskar,
Major of age, married,
Indian National, and

10) Smt. Vina Vivek Tulaskar,
Major of age, married,
Indian National,
Both r/o H. No. 26, Nagar Varkhand
Pernem, Goa, 403512.

11) Mamlatdar of Bardez Taluka,
Mapusa, Bardez, Goa.

... RESPONDENTS

Mr. Jagannath Mulgaonkar, Advocate for the Petitioner.

**Mr. Manish Sarkar, Government Advocate for Respondent
No. 11/Mamlatdar.**

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 4th OCTOBER, 2024.

ORAL JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. The matter is taken up for final disposal at the admission stage with the consent of the parties.
4. Heard Mr. Mulgaonkar, learned Counsel appearing for the Petitioner.
5. The order which I propose to pass in the present petition, requires no notice to private Respondent Nos. 1 to 10.
6. The Petitioner has filed the present petition with the following prayers:

“(A) For a writ of Certiorari or a writ or order or direction quashing and setting aside the Order dated 29/08/2024 in Land Revenue Appeal no. 25/2024 passed by the Learned Administrative Tribunal at Panaji and also the Final Notice dated

11/06/2024 issued by the Learned Mamlatdar of Bardez at Mapusa.

- (B) For a writ of Certiorari or a writ or order or direction quashing and setting aside the Caveat Application dated 15/01/2024 bearing No. MAM/BAR/REC/RERA/2024/376 issued by the Respondent no. 11, i.e., the Mamlatdar of Bardez.*
- (BA) For an interim order staying the operation of the Final Notice dated 11/06/2024 and the Caveat Application dated 15/01/2024, issued by the Learned Mamlatdar of Bardez at Mapusa.*
- (C) For an ex parte relief in terms of prayer clause BA.”*

7. Mr. Mulgaonkar submits that final notice issued by the Mamlatdar on 11.06.2024 and the Caveat application dated 15.01.2024 are challenged in the present petition.

8. Mr. Mulgaonkar would submit that the order passed by the Goa Real Estate Regulatory Authority are challenged before the Maharashtra Real Estate Appellate Tribunal, Mumbai by filing separate Appeals bearing Nos. G-6/2023

and G-8/2023. He submits that by two separate orders dated 29.11.2023 and 04.01.2024, the Appellate Tribunal granted stay on the impugned order dated 13.02.2023. He further submits that statement is made that the possession of the shops were already handed over to the respective allottees. However, the learned Mamlatdar, without considering such stay, passed the impugned order on 11.06.2024.

9. Mr. Salkar, learned Government Advocate appearing for the Respondent No. 11 would submit that if the order is passed inspite of granting of stay by the concerned authority, the same will have to be considered as without jurisdiction.

10. The present matter would go to show that two separate orders were passed by the Maharashtra Real Estate Appellate Tribunal dated 29.11.2023 and 04.01.2024. Order passed on 29.11.2023 by the Appellate Tribunal reads thus:

“Adv. Anwar Landge submits that Appellant/Promoter has already complied with the order dated 19th

Oct. 2023 of this Tribunal towards the compliance of the proviso to Section 43(5) the Act of 2016 and the copy of the compliance report has also been served to the other side.

- 2. C.A. Sagar G. Teli confirms the receipt of compliance report. served to other side.*
- 3. Perused compliance report. Appellant/Promoter has already complied with the proviso to Section 43(5) the Act of 2016 and compliance report has also been served to other side.*
- 4. Adv. Anwar Landge further submits that the interest till the date of filing of appeal has already been deposited in the Tribunal towards the compliance of the proviso to Section 43(5) the Act of 2016 and undertakes to further deposit the interest till the date of the deposit within 7 days.*
- 5. In view of the compliance of the proviso to Section 43(5) the Act of 2016 by depositing the amount, execution of the impugned order dated 13th Feb. 2023 passed by MahaRERA stands stayed till the pendency of the appeal.*
- 6. Accordingly, Misc. Application Nos. 508/23 and 512/23 stand*

disposed of as above.

7. *No costs.*
8. *8. The matter is already listed on 4th Jan. 2024.*
9. *Stand over to 4th Jan. 2024 for further compliance.”*

Order passed on 04.01.2024 by the Appellate Tribunal

reads thus:

“Advocate Mr. Anwar Landge submits that the Appellant has deposited the balance amount towards compliance of proviso to Section 43(5) of RERA and filed compliance report. Advocate Mr. Anwar Landge further submits that Appellant has served the copy of compliance report to the other side.

2] CA Mr. Sagar Teli submits that in these two Appeals the Developer has offered the possession but demanded exorbitant amount. He further submits that Allottees are ready to pay the amount as ordered by the learned Goa Authority to Appellant/Promoter.

3] Advocate Mr. Anwar Landge submits that Allottees are liable to pay GST. However, according to CA

Mr. Sagar Teli there is no mention of GST in the agreement for sale and therefore they are not liable to pay GST.

4] We are of the view that keeping open the point of GST, Promoter can handover the possession of the subject flat to Allottees and the said GST point will be considered at the time of final hearing. The amount of interest is secured. Therefore, we are of the view that there is no impediment in directing the Appellant to handover the possession of the subject flat by accepting the balance amount from the Allottees as ordered by the learned Authority.

5] CA Mr. Sagar Teli submits that the Allottees are ready to give an undertaking that they will pay applicable GST to Promoter subject decision of this Tribunal. In view of this submission, the Promoter is directed to handover the possession of the subject flats to Allottees after furnishing the undertaking as mentioned above by the Allottees.

6] Stand over to 11th March, 2024 for filing reply.

11. Mr. Mulgaonkar on instructions submits that the amount as mentioned in the order dated 29.11.2023 is

already deposited before the Appellate Authority and accordingly, stay order stands confirmed.

12. Mr. Mulgaonkar submits that this fact was brought to the notice of the Mamlatdar, however, without considering this, the impugned order dated 13.02.2023 is passed together with order dated 15.01.2024 addressed to the Sub Registrar. He submits that there is no such provision in the Real Estate Regulatory Authority Act to issue Caveat order.

13. The fact remains that as the Appellate Tribunal has granted stay on 29.11.2023, and the Petitioner is allowed to deposit the amount as directed by the Appellate Authority, the Mamlatdar was required to consider such aspect before issuing final notice dated 11.06.2024. The Mamlatdar cannot ignore the orders passed by the Appellate Authority and more particularly, orders passed by the Real Estate Appellate Regulatory Authority, which is subject of adjudication before the Mamlatdar. Accordingly, the Caveat Application

dated 15.01.2024, produced at page 34 and the final notice dated 11.06.2024 produced at 245 of this petition is required to be quashed and set aside.

14. Accordingly, both these orders are quashed and set aside.

15. Rule is made absolute in the above terms.

16. The petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.