

Bombay High Court

S.D. Corporation Pvt. Ltd vs Municipal Corporation Of Greater ... on 15 January, 2015

Bench: V.A. Naik

ssm

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 3126 OF 2014

S.D. Corporation Pvt. Ltd.,
being a Company registered under the
Companies Act, 1956 and having its
office at S.P. Centre, 41/44,

Minu Desai Marg, Colaba,
Mumbai-400 005.

Vs.

Municipal Corporation of Greater
Mumbai, Building Proposal Department,
R/Ward, C-Wing, Complex, 90 ft. D.P. Road,
Kandivali (E), Mumbai-400 101.

Mr. Virag Tulzapurkar, Senior Counsel a/w Mr. Simil Purohit and Ms. J.
Sheth with Mr. Karan Dua i/by Wadia Ghandy & Co. for the Petitioner.
Mr. Anil Singh, Senior Counsel a/w Mr. Anil Yadav for the Respondent-BMC.

CORAM : SMT. VASANTI A. NAIK AND

DATE : 15th JANUARY 2015.

P.C.-

By this Petition, the Petitioner seeks a direction to the Respondent to grant approval for development of property on the basis of the deed of Power of Attorney dated 21.2.2007. The Petitioner seeks a direction restraining the Respondent Corporation from implementing the Circular dated 11.9.2012, requiring a registered deed of Power of Attorney.

ssm 2 904-wpl3126.14.sxw The Petitioner also challenges the order of the Corporation dated 3.11.2014 declining to accept the unregistered deed of Power of Attorney, dated 21.2.2007.

The Petitioner is a company engaged in the development/re-

development of immovable properties in and around Mumbai. It is the case of the Petitioner that, several Societies had formed a union of Societies and the apex Society had appointed the Petitioner for development of several buildings, that were required to be developed or re-developed. The development agreement was executed in the year 2007 and a deed of Power of Attorney was also executed on 21.2.2007. The deed of Power of Attorney was not registered. By the deed of Power of Attorney dated 21.2.2007, the Petitioner was permitted to develop/re-develop the property, sell the property and also perform all other ancillary acts or deeds for the development and sale of the same. On the basis of the deed of Power of Attorney dated 21.2.2007, the Petitioner applied in the year 2014, to the Corporation for sanctioning the building plans for development, however, the Corporation rejected the application filed by the Petitioner in view of the Circular dated 11.9.2012, as a registered deed of Power of Attorney was not presented. Since the order was passed by the Corporation without granting an opportunity of hearing to the Petitioner, by an order in a Writ Petition filed by the Petitioner, the matter was remanded to the Corporation for passing an appropriate order after hearing the Petitioner. After granting ssm 3 904-wpl3126.14.sxw an opportunity of hearing to the Petitioner, by the impugned order dated 3.11.2014, the Corporation refused to accept the unregistered deed of Power of Attorney dated 21.2.2007. The order dated 3.11.2014 is impugned in the instant Petition.

Shri Tulzapurkar, the learned Senior Counsel appearing for the Petitioner submitted that the impugned order is clearly illegal as is liable to be set aside. It is stated that the unregistered deed of Power of Attorney dated 21.2.2007 was rejected by the Corporation only on two grounds. It is stated that the same was rejected in view of Development Control Regulation No. 5(3) (ii) (a) and also in view of the Circular of the Corporation, dated 11.9.2012, providing for the requirement of a registered deed of Power of Attorney while seeking sanction for development. It is submitted that the Corporation was not justified in refusing to accept the unregistered deed of Power of Attorney dated 21.2.2007, as the power or authority granted to the Petitioner could not be fettered by the issuance of the Circular dated 11.9.2012 and the Maharashtra Amendment to Section 17 of the Registration Act, 1908 that was brought into effect from 1.4.2013. It is submitted that in view of the

provisions of the Maharashtra Amendment, an irrevocable Power of Attorney to transfer immovable property was required to be registered only if it was executed on and after the commencement of the Registration (Maharashtra Amendment) Act, 2010. It is stated that only a deed of Power ssm 4 904-wpl3126.14.sxw of Attorney executed on or after 1.4.2013 was required to be registered by the Maharashtra Amendment and the deed of Power of Attorney executed on 21.2.2007 did not require registration. It is stated that the insistence by the Corporation on the registration of the deed of Power of Attorney dated 21.2.2007, is bad in law. It is submitted that the Circular dated 11.9.2012 is prospective in nature and hence the Corporation ought to have accepted the unregistered deed of Power of Attorney executed before that date.

Shri Singh, the learned Senior Counsel for the Corporation supported the impugned order and submitted that in view of the Circular dated 11.9.2012, and the Maharashtra Amendment to the provisions of Section 17 of the Registration Act, the Corporation had rightly asked the Petitioner to submit a registered deed of Power of Attorney in the matter of seeking permission for development. It is submitted that the ownership rights in the property in question, were with the MHADA and the Samata Nagar Society, the lessee of MHADA had entered into a development agreement with the Petitioner. It is stated that the development agreement executed in the year 2007 is not registered and though a confirmation deed executed on 28.10.2010 is registered, the same would not have the effect of registration of the development agreement, executed in the year 2007. It is stated that, by the deed of Power of Attorney executed on 21.2.2007, the Petitioner was empowered to develop the property, to sell the same and to perform all acts and deeds for ensuring the development and sale of the ssm 5 904-wpl3126.14.sxw property. It is stated that the deed of Power of Attorney dated 21.2.2007 was tendered by the Petitioner to the Corporation for the first time on 21.6.2014, while seeking permission for development of the property. It is stated that, in view of the Circular dated 11.9.2012 and the Maharashtra Amendment to the provisions of Section 17 of the Registration Act, the Corporation was not obliged to accept the unregistered deed of Power of Attorney. It is stated that the Corporation had insisted on a registered deed of Power of Attorney and the said demand is in consonance with the Maharashtra Amendment to the provisions of Section 17 of the Registration Act and the Circular dated 11.09.2012. The learned counsel sought for the dismissal of the Writ Petition.

On hearing the learned counsel for the parties and on a perusal of the impugned order, the amended provisions of the Registration Act 1908, as also the Circular dated 11.9.2012, it appears that the Corporation was justified in declining to accept the unregistered deed of Power of Attorney, dated 21.2.2007. The Petitioner could not have sought permission for development on the basis of the unregistered deed of Power of Attorney, after the issuance of the Circular dated 11.9.2012 and the Amendment to the provisions of Section 17 of the Registration Act. The submission made on behalf of the Petitioner, on a mistaken notion that the Corporation has insisted on the registration of the deed of Power of Attorney executed on 21.2.2007, by referring to the Maharashtra ssm 6 904-wpl3126.14.sxw Amendment to Section 17, which provides that an irrecoverable Power of Attorney relating to the transfer of immovable property executed on or after the commencement of the amended Act on 1.4.2013, is liable to be registered and hence the deed of Power of Attorney executed on 21.2.2007 could not have been registered subsequently, is liable to be rejected. The Corporation had not insisted on the registration of the deed of Power of Attorney executed on

21.2.2007 and had only sought a registered Power of Attorney while seeking the development of the property in question. What is required by the Corporation, after the coming into force of the Maharashtra Amendment and after the issuance of the Circular dated 11.9.2012, is a registered deed of Power of Attorney for seeking permission for development. The Corporation is not seeking a registered deed of Power of Attorney in respect of a development permission granted before the issuance of the circular dated 11.9.2012. If the Petitioner is really interested in the development of the property in question, the Petitioner is free to seek permission by producing a deed of Power of Attorney that is registered.

On a reading of the Circular dated 11.9.2012 and the Maharashtra Amendment to the provisions of the Registration Act, we do not find anything wrong with the refusal on the part of the Corporation to accept the unregistered deed of Power of Attorney. The Circular is prospective in nature and the same provides that while seeking permission ssm 7 904-wpl3126.14.sxw for development, submission of a registered development agreement and a registered deed of Power of Attorney would be necessary. In the instant case, the Petitioner has sought permission for development in the year 2014 i.e. after coming into force of the Circular as well as the amended provisions of Section 17 of the Registration Act, on 1.4.2013. The Corporation was therefore, justified in seeking a registered deed of Power of Attorney from the Petitioner.

Since, the impugned order appears to be just and proper, the Writ Petition is dismissed, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A