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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1604 OF 2016

M/s.Kalyan Properties

...Petitioner

Vs.

Union of India & Ors.

...Respondents

Mr.G.S. Godbole i/b. Mr.S.N. Biradar for Petitioner.

Mr.Anil Singh, ASG, with Mr.R.P. Ojha i/b. Mr.T.J. Pandian for
Respondent Nos.1 and 2.

Mr.M.M. Pabale, AGP, for Respondent Nos.3 to 5 & 7.

Mr.A.S. Rao for Respondent No.6.

CORAM : NARESH H. PATIL, ACTING C.J. AND
G.S. KULKARNI, J.

RESERVED ON: 25th SEPTEMBER 2018

PRONOUNCED ON : 27th SEPTEMBER 2018.

JUDGMENT: Per G.S.Kulkarni, J.

The Petitioner/partnership firm, engaged in the business of development, is before the Court principally against the Union of India through the Ministry of Railway (for short, 'the Railways'), inter-alia being aggrieved by the refusal of a 'no objection' by the railways for development/construction of a residential project to be undertaken on plot bearing CTS No.3380/1 and 3379 (Survey No.245/2 and 246) situated at Village Kalyan (for short, the 'said land').

2. As averred in the petition, original owner of the land was one Khalid Amirsaheb Jalal and after his lifetime, his legal heirs by various registered deeds and documents, conveyed the said land in favour of one Manojkumar Punamiya, Lata Punamiya, Arvind Vyas and Danmal Ranawat. Thereafter Arvind Vyas and Danmal Ranawat executed a registered release deed, of their share in favour of Manojkumar Punamiya and Lata Punamiya (for short, 'Punamiyas') and thus, Punamiyas were the absolute owners of the said two properties. Punamiyas thereafter executed an agreement to sale-cum-development in favour of one M/s.Aakruti Marketing Pvt. Ltd. Subsequent thereto an agreement to sale dated 5th September 2012 was entered into by Punamiyas with the petitioner and with Aakruti Marketing Pvt. Ltd. as confirming party for sale of the said land. Thereafter registered Deed of Conveyance was executed on 17th September 2014. It is stated that the petitioner accordingly has become owner of the said land.

3. The petitioner has stated that as the petitioner intended to undertake development of the said land by construction of a residential building, it had approached respondent No.6/Kalyan Dombivali Municipal Corporation (for short, 'Municipal Corporation') by submitting necessary plans. Earlier the Punamiyas had submitted a

development proposal to the Municipal Corporation. As also an IOD (intimation of disapproval)/development permission was issued under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 for construction of a building of ground + 7 floors. The said permission was valid only for one year. The said development permission contained clause 12 in regard to a NOC to be obtained from the railways. Clause 12 reads as under:-

“if the land is adjoining/within 30 mtr. Distance of railway track, then NOC of the Railway Department to be obtained and copy of such NOC of Railway Department be submitted to this office.”

The said land owners thereafter had applied for renewal of the construction permission and accordingly Municipal Corporation has issued the revised construction permission/IOD dated 2nd May 2014 by extending period to undertake construction from 02.05.2014 to 01.05.2015. However, the development could not commence for various reasons.

4. The petitioner therefore, submitted an application to the Municipal Corporation on 26th April 2015 for renewal of the construction permission and because of a stay granted by the District Collector by order dated 23rd April 2015 to the NA (non-agricultural) order under Section 44 of Maharashtra Land Revenue Code, 1966 dated 5th September 2014, the Corporation is taking no action for renewal of

the IOD/development permission. A revised construction permission was therefore required to be made. Now the District Collector, Thane, has also issued a NA order concerning the said land on 5th September 2014. As per the condition of the IOD, the petitioner had approached the railways for a “No Objection Certificate”. Regulation 45(b) of the development control rules of the Corporation provides that no new construction of a building or reconstruction of an existing building shall be allowed within a distance of 30 m from railway boundary without the no objection certificate issued by the railway authorities.

5. The railway has taken a stand that as per its record, the said land is of the ownership of the railways and therefore the railway cannot issue a No Objection Certificate, for any redevelopment to be undertaken by the petitioner on the said land, as already informed to the petitioner by their letter dated 4th June 2015 (Exhibit-O).

6. On the above factual antecedents, being aggrieved by the stand as taken by the railways, the petitioner has filed the present petition making the following extensive prayers (original as amended) :-

“(a) Call for Record and Proceeding of the case, grant rule and allow this petition.

b) Issue appropriate writ, order or direction to hold and declare that any part of Survey No. 245/2 (CTS No. 3380/1) and Survey No.246 (CTS No. 3379), Station Road, Kalyan, District – Thane, Maharashtra was never acquired by

Revenue Authorities in land acquisition proceeding in pursuance of the Land Acquisition Act, 1894 for the purpose of Great Indian Peninsula Railways or Indian Railway and consequently said property never vested in Great Indian Peninsula Railways or Indian Railway.

c) Issue appropriate writ, order or direction to hold and declare that any part of Survey No. 245/2 (CTS No. 3380/1) and Survey No.246 (CTS No. 3379), Station Road, Kalyan, District – Thane, Maharashtra is not within the distance of 30 meter from Railway Track Boundary and therefore NOC of Indian Railway Authorities is not necessary for carrying out any construction in Survey No.245/2 (CTS No. 3380/1) and Survey No. 246 (CTS No.3379), Station Road, Kalyan, District – Thane.

d) Issue appropriate writ, order or direction to quash and set aside NOC rejection letter / order bearing no. BB.W.6001/LM/KYN S.No.245-246/NOC/443/KYN.DB dated 4.6.2015 issued by DEN (LM)/CSTM, DRM (Wks)'s Office, Mumbai CST, Central Railway.

e) Issue appropriate writ, order or direction to quash order bearing no. Revenue/Cell1/T7/NAP/Kalyan/SR142/2013 dated 23.4.2015 issued by District Collector, Thane and to drop the said proceeding as unconstitutional, illegal and void-ab-initio.

f) In the alternate, issue appropriate writ, order or direction to Respondent No. 1 and 2 to grant immediately NOC of Indian Railway to Petitioner for carrying out proposed construction on Survey No. 245/2 (CTS No. 3380/1) and Survey No. 246 (CTS No.3379), Station Road, Kalyan, District – Thane, Maharashtra.

g) Issue appropriate writ, order or direction to Kalyan Dombivali Municipal Corporation to grant further extension for a period of three years to IOD No. KDMC/TPD/CC/KV/2013-14/22 dated 2.5.2013 u/s. 45 of MRTP Act, 1966 issued by KDMC r/w. Extension IOD bearing outward no. KDMC/TDP/279 Dated 2.5.2014 issued by KDMC so as to enable Petitioner to commence and complete proposed construction therein in accordance with law.

g.i) issue appropriate writ, order or direction to call for record & proceedings pertaining to Dy.SLR, Kalyan's reports dated 15.2.2016 & 26.2.2016; DSLR, Thane's order dated 1.3.2016 and Dy.SLR, Kalyan's notice dated 8.3.2016 and after examining legality & validity of the same, quash & set aside DSLR, Thane order No.CTS.1/Review/DySLR, Kalyan/590/CTS3379,3380/1, 3380/2/2016 dated 1.3.2016, Dy.SLR, Kalyan notice No.CTS/CTS. 3379, 3380, 3380/1, 3380/2/ Review/2016 dated 8.3.2016 (including further

proceedings and order if any therein) in the interest of justice;

g.ii) during the pendency and final disposal of present Writ Petition, grant stay to DSLR, Thane order No.CTS.1/Review/Dy.SLR, Kalyan notice No.CTS/CTS.3379, 3380, 3380/1, 3380/2/Review/2016 dated 8.3.2016 (including further proceedings and order if any therein) in the interest of justice;

g.iii) Issue appropriate writ order or direction to call for record and proceeding pertaining to District Collector Thane's order bearing no.Revenue/Pol1/T7/NAP/MoujeKalyan/SR-142/2013/ Com.Apln. Dated 15.3.2016 and after examining legality and validity of the same, quash and set aside the said order as being violative of statutory provisions as well as constitutional mandate in the interest of justice.

g.iv) During the pendency and final disposal of the present writ petition, grant stay to order bearing no. Revenue/Pol1/T7/NAP/ MoujeKalyan/SR-142/2013/Com. Apln. dated 15.3.2016 passed by District Collector, Thane.

h) During the pendency and final disposal of the present writ petition, issue interim direction to Kalyan Dombivali Municipal Corporation to grant further extension for a period of three years to IOD No. KDMC/TPD/CC/KV/2013-14/22 dated 2.5.2013 u/s.45 of MRTP Act, 1966 issued by KDMC r/w. extension IOD bearing outward no. KDMC/TDP/279 Dated 2.5.2014 issued by KDMC so as to enable Petitioner to commence and complete proposed construction therein in accordance with law.

i) During the pendency and final disposal of the present writ petition, grant stay to order bearing no. Revenue/Cell1/T7/NAP/ Kalyan/SR142/2013 dated 23.4.2015 issued by District Collector, Thane and further proceeding therein.

j) During the pendency and final disposal of the present writ petition, grant stay to NOC rejection letter / order bearing no. BB.W.6001/LM/KYNS No.245-246/NOC/443/KYN.DB dated 4.6.2015 issued by DEN (LM)/CSTM, DRM (Wks)'s Office, Mumbai CST, Central Railway and issue further interim direction to Respondent No.1 & 2 to grant immediately NOC of Indian Railway to Petitioner for carrying out proposed construction on Survey No. 245/2 (CTS No. 3380/1) and Survey No. 246 (CTS No. 3379), Station Road, Kalyan, District – Thane, Maharashtra.

k) Grant ad-interim ex-parte relief in terms of prayer clause (h), (i) & (j) and confirm the same after notices to the Respondents.

- l) Award cost of the present petition to Petitioner from the Respondents.
- m) Pass other appropriate orders in the interest of justice.”

7. We have heard Mr.Godbole, learned Counsel for the petitioner, and Mr.Anil Singh, learned Additional Solicitor General for Union of India and Railways.

8. The railway has taken a categorical stand that the land belongs to the railway and to substantiate the said plea, has also placed on record several old documents to show that the land was acquired for the purpose of railways. On the other hand, the petitioner disputing the documents of the railway has asserted ownership of the land on the basis of registered sale deeds. On the basis of which it seeks to develop the said land.

9. We are not persuaded to accept the submissions as urged on behalf of the petitioner. Considering the extensive prayers as noted by us above, it would not be possible for us to grant reliefs to the petitioner in these proceedings. It is clear to us that there are number of disputed questions of facts on the ownership of the land, requiring evidence to be led. We are afraid that these issues cannot be gone into in exercise of the Court's jurisdiction under Article 226 of the Constitution of India. We accordingly refuse to entertain this petition.

However, it would be open for the petitioner to seek adjudication of its grievances in a civil suit or any other appropriate proceeding as the petitioner may desire. We keep open all contentions of the parties on the merits of the matter.

10. The writ petition stands disposed of in the above terms. No costs.

G.S. KULKARNI, J.

ACTING CHIEF JUSTICE