Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION (ST) NO. 2070 OF 2023
IN
WRIT PETITION NO. 11975 OF 2022

RVS Global Solutions Pvt Ltd ...Applicant

In the matter between

RVS Global Solutions Pvt Ltd ...Petitioner

Versus

State of Maharashtra & Ors ...Respondents

Mr Subhash Jha, *with Siddharth Jha, Meena Mishra, Alka Pandey & Monika Kale, for the Applicant.*
Mr SB Kalel, AGP, *for Respondent No.1-State.*
Mr Prashant Chawan, *with Shraddha Chheda i/b Navdeep Vora & Associates, for Respondents Nos.2 and 3.*

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 20th March 2023

PC:-

1. The Interim Application can be disposed of by the following order.

2. Prayer clause (a) of the Interim Application at page 19 seeks this relief:

"a) that this Hon'ble Court may be pleased to direct the Respondents to delete and/or relax and/or dispense with the condition (d) from the transfer order dated 13th January 2023, being Exhibit 'VI' annexed herewith;"

3. The relevant condition is at page 30A and it reads thus:

"d) Transferee cannot transfer or create third party interest in the demised plot in any manner till disposal of the Writ Petition. As the outcome of the Writ Petition No. 11975/2022, in respect of the demised Plot No. EL-79 is awaited, the Petitioner shall be liable to pay dues, if any, as per the final decision of the Hon'ble High Court, Bombay in the said Writ Petition No. 11975/2022."

4. At page 15, the Petitioner says:

"As the Applicant has now planned to move their business activities in a much bigger area than the existing premises and the adjacent open plot,, i.e., Plot No. EL-80 and which requires the Applicant to dispose of both the properties, i.e., Plot Nos. EL-79 and EL-90 so that the proceeds thereof could be utilised for buying another bigger property at Mahape MIDC itself. The Applicant has already identified a few properties which they are contemplating to acquire and because of the colossal and inordinate delay caused by MIDC at every stage at least two properties which were identified by the Applicant for being acquired for carrying out their business therefrom have already been sold."

5. We are not impressed with Mr Chawan's argument for Maharashtra Industrial Development Corporation ("**MIDC**") that if the Petitioner is allowed to dispose of the property, MIDC will have no recourse for recovery of tax. The argument has no appeal because if there is a tax payable on the transaction that the Petitioner proposes, and we note that the Petitioner is proposing to take a larger property within MIDC itself, then undoubtedly that tax would have to be paid depending on where the incidence of tax falls.

6. If the real concern of MIDC is about amounts said to be due from the original lessee prior to the auction sale at which the present Petitioner purchased the property that it now wishes to transact, it does not seem to us reasonable to hold that, where an auction sale is conducted on an as-is-where-is basis, and the prospective auction purchasers are not put to notice that they must pay dues pending by the original lessee, that at a later stage, other amounts due from the predecessor can be demanded from the successful auction purchaser. We will consider the rival arguments in this regard at the final hearing of the Petition because Mr Jha has said more than once that the Petition raises a larger question about how MIDC goes about its affairs.

7. Mr Chawan clarifies that the concern is not about past dues, but about any incidence of tax on what the Petitioner now proposes. But if that is so, then clause (d) is entirely unjustified. It says nothing at all about tax liabilities. It only attempts to block the Petitioner from transacting the property *because of the pendency of this Writ Petition*. That is surely unreasonable, because the fact that this Writ Petition is pending cannot possibly be a clog on title.

8. If the concern of MIDC is about the levy of GST on MIDC because it may be held to be a service provider, then that is a separate dispute and there can be no question of MIDC imposing such a condition in anticipation of a demand from the GST Authorities. Whether MIDC is entitled to an indemnity from the present Petitioner or whether the Petitioner will pay the GST demand on a without prejudice basis are matters that will have to be addressed once there is in fact a demand. At this stage, that is not a reason to impose a condition such as clause (d).

9. For the present, we dispose of the Interim Application by holding and directing that clause (d) will not apply or operate and will not prevent the Petitioner from transacting the property. That transaction will have to conform to all other applicable rules and regulations including payment of taxes as applicable on the proposed transaction.

10. In the facts and circumstances of the case, there will be no order as to costs.

(Neela Gokhale, J) **(G. S. Patel, J)**

RAJU DATTATRAYA GAIKWAD Digitally signed by RAJU DATTATRAYA GAIKWAD Date: 2023.03.21 18:47:23 +0530