

IN THE COURT OF SMALL CAUSES AT MUMBAI ORDER BELOW EXHIBIT NO.15

IN

OBSTRUCTIONIST NOTICE NO.18 OF 2010

IN

L.E. & C. Suit No. 201/281 of 1980

The Board of Trustees of the Port of Mumbai ... Plaintiff

V/s.

Ajaykumar Ved Parkash

... Defendant

And

Kirit C. Mehta & Ors.

... Obstructionists

Advocate for the Plaintiff (D.H.) :Mrs. Anu Khanna, Learned Advocate for the Obstructionist/s : Mr. Ravindra Joshi, Learned

Coram: Shri. S. S. Ghuge

Judge, C. R. No.24

Date: 17.03.2021

ORDER:

- 1. The application is filed by the obstructionist for the reliefs as under:-
 - (a) to record that the parties have arrived at the compromise and the matter has been settled under O.23 R.3 of the C.P.C r/w Sec.151 of the C.P.C and appropriate order may be passed .
 - (b) to record that there exists elements of settlement and refer the matter for (a) arbitration , (b)

- Conciliation, (c) Mediation or Lokadalat as per Sec.89 of C.P.C.
- (c) pending the outcome of the P.M.O representation , the present proceeding be kept sine die.
- (d) any other reliefs as deem fit.
- 2. The obstructionists have stated that exparte decree is passed against the original defendant on 05.11.2003 and thereafter the execution of decree was filed. The warrant of possession was issued and the same was obstructed by the obstructionist as they have independent right, title and interest in the suit property.
- 3. The obstructionist have filed their written statement on the ground of settlement in view of various TR's passed by the plaintiff and in view of the Judgment of Hon'ble Supreme Court in case of Jamshed Wadia vrs B.P.T dated 13.01.2004.
- 4. The obstructionists have further submitted that the defendant has thrice submitted the compromise letters to the plainitff in prescribed format. The first letter was submitted on 21.09.2006 alongwith pay order of Rs.50,000/- as per the requirement to compromise the matter inview of the Judgment of Hon'ble Supreme Court in case of Jamshed Wadia vrs BPT and the various TR's passed by the plaintiff. The letter dated 21.09.2006 is signed by the obstructionists being the proposed transferees.
- 5. The obstructionist have further submitted the second letter dated 24.12.2007 and third letter on 14.05.2009 and shown his willingness to settle the matter and also requested for 15 monthly lease as per the policy of the plaintiff.
- 6. The obstructionist have further submitted that the plaintiff vide their letter dated 27.09.2010 bearing no.EM/U-7/HF-100/TV/4148 dated 27.09.2010 addressed to the obstructionists have forwarded a draft

indemnity bond and requested to submit the same duly notarized on stamp paper of Rs.300/-

- 7. The obstructionist have further submitted that they have also tendered fresh compromise letter dated 17.01.2012 in prescribed format of the plaintiffs alongwith 2 pay orders of Rs.25,000/- each. The obstructionist have also tendered their indemnity bond vide their letter dated 25.01.2012 and thus the obstructionist have complied with the conditions of the plaintiffs for compromise.
- 8. The obstructionist have further submitted that thereafter they have made substantial payment to the plaintiff and the same is accepted by the plaintiff though the receipts are issued in the name of the defendant. The obstructionist have further submitted that they have complied with all the formalities for compromise as per the judgment of Hon'ble Supreme Court incase of Jamshed Wadia Vrs B.P.T.The obstructionists have also shown their willingness to settle the matter and also made payment towards the same. The obstructionist are also ready and willing to deposit the amount if due.
- 9. The obstructionist have further submitted that the plaintiff has settled several matters with other obstructionists/ occupants as per the judgment of Hon'ble Supreme Court in case of Jamshed Wadia vrs B.P.T dated 13.01.2004 however the plaintiff has not settled matters with other occupants/ obstructionists and have acted arbitrarily, unreasonably and without proper application of mind.
- 10. The obstructionists have further submitted that T.R.No.152/1999, T.R.No. 253/1999, 31/2004 T.R.No.61/2007, T.R.No.52/2008 and T.R.No.171/2008 are sanctioned by the plaintiff for the settlement of the matter with the obstructionists. The obstructionists have further submitted that inview of plaintiffs circular dated 14.07.1998 and Trustees Resolution for compromise upon obstructionists have duly complied with the requirement of the plaintiff's for

compromise and therefore the plaintiffs are entitled to proceed with the matter as the process for compromise is completed.

- 11. The obstructinists have further submitted that inview of T.R.No 152/1999, the plaintiff has resolved as :-" All cases at any stage of litigation be settled under compromise proposal except where possession of the premises is taken back or where Court has passed order to break open lock which is rejected. In cases where possession is taken and restored by the Court, request for compromise be brought before the Board."
- 12. By T.R.No.31/2004, the plaintiff has approved the policy for long lease of 30 years with effect from 1st April 1994 to 31st March 2024 with 4% per annum increase in the rent. By the said T.R.No.31/2004 confirmed the policy for compromise under T.R.No.152/1999.
- 13. By T.R.No.52/2008 r/w T.R.No..171/2008 , sanction was accorded to settle the matter with the obstructionists who make full paymentd of all the dues as well as indemnifying the Port against any claim etc. where possession is still with the obstructionists and not taken over by MBPT.
- 14. The obstructionist have further submitted that at no point of time the plaintiff has informed that settlement is not possible but on the contrary the plaintiff has passed Trustees Resolution to compromise the matter, therefore it is just and necessary to record that the parties have arrived at compromise and withdraw the notice.
- 15. The obstructionists have further submitted that the corrospondence between the parties show that there exists elements of settlement and the matter be referred to arbitration, conciliation, mediation or lokadalat as per Sec.89 of C.P.C.
- 16. The obstructionist have further submitted that the plaintiffs failed to pay attention to their own T.R's, therefore Adv.K.P.Gala and Associates vide its letter dated 26.08.2019 made representation to the

Hon'ble Prime Minister of India to look into the matter and help thousands of litigants , tenants including residents and commercials who are earning their livelihood from the premises. The said representation was received by the Office of Hon'ble Prime Minister on 26.08.2019 and reply is received on $11^{\rm th}$ September 2019 that the representation is under consideration.

- The obstructionists have further submitted that they were informed that the Hon'ble Prime Minister and Shipping Ministry are formulating the policies relating to the overall settlement of BPT matters to avoid and lessen the burden of litigation on the Courts. Inview of the said, the plaintiff has addressed letter to Adv. Harita Shah of the said K.P. Gala and Associates. The said letter is issued by the Estate manager and informed that the MBPT has prepared master plan for its lands in Mumbai City by identifying the areas as Port and Port allied areas and township areas. Further the township areas are classified as redevelopment and non-redevelopment areas. MBPT will consider renewal of expired leases falling renewal areas in accordance with policy guidelines by the Ministry of Shipping, Govt.of India. The obstructionists have further submitted that they have cleared all the arrears till date and therefore it is just and proper to stay or keep the matter sine die till the outcome of the P.M.O application.
- 18. The obstructionist has further submitted that even the Hon'ble Chief Justice of India has promulgated the importance of mediation between the parties in order to reduce the burden of the Courts, hence the present matter be referred under Sec.89 of C.P.C as there exists element of settlement.
- 19. The plaintiff has filed say to the application at Exh.16 and denied that the compromise proposals are submitted to the obstructionst and to the defendant as alleged. The plaintiff has further submitted that it is entitled to proceed with the matter as there in no settlement. The plaintiff has submitted that the amount is accepted without prejudice towards

compensation.

- 20. The plaintiff has further submitted that compromise can be done only when the conditions in the T.R's are complied with otherwise there is no compromise. The plaintiff has further submitted that there is no settlement, hence the application be rejected.
- 21. From the contents in the application and say filed thereon, following points arose for my determination and I record my findings thereon as under:-

Sr.No.	Points	Findings
01	Whether the matter is settled as contended	In affirmative
	by the obstructionist ?	
02	Whether the matter needs to be referred to	In negative
	ADR under Sec.89 of C.P.C?	
03	Whether the matter needs to be kept sine die	In negative
	till the decision on the PMO representation ?	
04	Whether the obstructionist notice survives ?	In negative
05	What order ?	Obstructionist notice is disposed of.

Arguments:

- Heard Adv.Joshi for the obstructionist. He argued that the plaintiff has issued letter to the defendant and the obstructionist on 23.04.2010 for settlement of the matter. He further argued that the plaintiff has also enclosed a draft of the indemnity bond to be enclosed with the settlement proposal. He further argued that the said conditions mentioned in the application a dated 23.04.2010 are duly complied by the obstructionist, hence the matter is settled but inspite of it the obstructionist notice is not withdrawn by the plaintiff.
- 23. On the otherhand, Adv. Patil for S.K.Legal representing the plaintiffs argued that there is no settlement as alleged by the obstructionists,

hence the application be rejected.

- 24. Adv.Giri assisting Adv.Joshi for the obstructionist argued that the plaintiff has given the proposal to the defendant and in some cases to the obstructionists for settlement and separate Trustees Resolution was also passed to that effect. She further argued that the conduct of the plaintiff suffers from the principle of promisory estoppel as once the promise is given and it is acted upon by the other party, then the person/party giving the promise cannot backout from the offer/promise. She placed her reliance on ruling reported in LAWS (SC) -1978 -12-10 incase of Motilal Padampat Sugar Mills Company Limited vrs State of Uttar Pradesh wherein it has been held that , " The true principle of promisory estoppel seems to be that where one party has by his words or conduct made to the other a legal relationship to arise in the future, knowing or intending to create relations or affect a legal relationship to arise in future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party , the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not. "She argued that the plaintiff has accepted the indemnity bond and the amount from the obstructionist, therefore the plaintiff cannot go back from the promise.
- 25. It is further held in the above ruling that , " The principle of promisory estoppel is applicable against the Govt , but it cannot be enforced only if the Court is satisfied on proper and adequate material placed by the Govt.that overriding public interest requires that the Govt.should not be held bound by the promise but should be free to act unfettered by it , that the Court would refuse to enforce the promise against the Govt."
- 26. Adv.Giri for the obstructionist further placed her reliance on

ruling reported in *Union of India and others Vrs Indo-Afgan Agencies Ltd* reported in *AIR 1968 SCR (2) 366* wherein it has been held that, " *The Govt.is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor to be the judge of its own obligation to the citizen on an ex-parte appraisement of the circumstances in which the obligation has arise.*

27. She further argued that the plaintiff has made the promise and it is duly complied, hence the obstructionist notice be disposed of as settled.

As to point no.1

- 28. It is the contention of the obstructionist that the plaintiff has issued letter to the defendant and to the obstructionist for settlement and also forwarded a copy of indemnity bond alongwith the letter. The obstructionist has filed the letter at Exh. 18/04. It reveals that the letter is issued by the plaintiff to the defendant directing to furnish proper application in standard format as prescribed by MBPT duly signed by the obstructionist on record with requisite documents for settlement and willingness to pay revised rent/arrears. Para (III) (d) of the letter reveals that the breach is committed by the defendant by unauthorized sub-letting to Kirit Mehta and others i.e obstructionist. The plaintiff has enclosed standard format, application for regularization of breaches format and data base format.
- 29. The obstructionists have further submitted the letter issued by the plaintiff at **Exh.18/05**. The plaintiff has issued letter to the obstructionist dated 27.09.2010 directing it to submit the duly notarized stamp paper of Rs.300/-. The draft of indemnity bond was also enclosed with the letter.
- 30. The obstructionist has further submitted the letter at **Exh.18/09.** dated 17.01.2012. It reveals that the obstructionist have submitted the application to the plaintiff for settlement as per the letter of

the plaintiff dated 27.09.2010 alongwith the demand draft of Rs.25,000/each. The obstructionists have further submitted the letter dated 25.01.2012 at **Exh.18/10**. It reveals that the obstructionist have submitted the indemnity bond as per the requirement of the plaintiff. Both the letters dated **17.01.2012** and **27.09.2010** are received by the plaintiff and also the pay order was also received by the plaintiff.

- 31. The obstructionist have further submitted the T.R.No. 52/2008 below list Exh.06. It reveals that the letter are issued by Adv.Nirmal , Mb.P.T. Advocate , that several matters are pending in Small Causes Court pertain to obstructionists' notices where the obstructionists have made full payment and or they are ready to make full payment as per the Judgment of Hon'ble Supreme Court.
- 32. Then as the trustees have passed the said resolution by which sanction was accorded to withdraw obstructionist proceeding of the obstructionist:-
 - (i) who have made full payment of all the dues and are prepared to pay all the charges which are payable if and when the matter is settled .

AND

(ii) obstructionist have in court record have made application for settlement and jointly signed in consent letter for such purpose.

AND

(iii) all the obstructionist in Court record must be informed in clear terms that revised rent w.e.f 01.09.2008 in confirmity with T.R.No.127 of 2006 would be applicable and obstructionists have unequivocally accepted to pay the dues accordingly.

AND

(iv) The obstructionist have submitted indemnity bond infavor of MbPT indemnifying the board against any claim, demand, loss, costs, charges and expenses which may be incurred or suffered by the Board on account of or arising out of any claim etc.

AND

(v) No appeal is filed by the original defendants and no new trial application is pending in the trial Court or the decree executed is not an ex-parte decree.

AND

conditions are fulfilled.

- (vi) No general order on obstructionists chamber summon has been received or passed by the Hon'ble Court.It is resolved to withdraw the obstructionist proceeding if the
- 33. The obstructionist have submitted that have submitted the indemnity bond as required by the plaintiff. It is pertinent to note that the letter was sent by the plaintiff after the T.R.No.52/08 was passed by the plaintiff. It is also pertinent to note that in the reply filed by the plaintiff to the present application, it is no where stated that the terms and conditions of T.R.No. 52/2008 are not fulfilled. The plaintiff has stated that the amount is always accepted without prejudice to its rights by the plaintiff, hence from the above discussion, it prima facie appears that the obstructionists have complied the conditions in T.R.No.52/2008 and the matter is settled.
- 34. By the letter dated 27.09.2010 and the T.R.No. 52/2008, the plaintiff has given promise to the obstructionist for the settlement of the matter and if the conditions imposed by the plaintiff are fulfiled, then the plaintiff cannot backout from its promise. The plaintiff being a statutory body of the Govt., has to perform its promise. The principle of promisory

estoppel is equally applicable to the plaintiff also however it is necessary to see whether the promise made by the plaintiff is against the public interest. It is pertinent to note here that the suit property is let out to the defendant and the decree is passed to vacate the suit property. The plaintiff has passed T.R to settle the matter and it cannot be said that the act of the plaintiff or promise made by the plaintiff is against the public interest, hence the plaintiff is bound to perform the promise and withdraw the present proceeding, hence I answer point no.1 in affirmative.

As to point no.2

35. The obstructionists have further submitted that there exists elements of settlement in view of the compliance made by the obstructionists. As per discussion of point no.1, the obstructionists have complied the conditions of the plaintiff, hence the matter needs to be withdrawn however, the plaintiff has denied that there exists any element of settlement, therefore the matter cannot be referred to mediation hence I answer point no.2 in negative.

As to point no.3

- 36. The obstructionists have further submitted that K.P.Gala and Associates have made representation to the Hon'ble Prime Minister of India to frame guidelines to settle the matter and reply is also received on 28.11.2019 that the Ministry of Shipping, Govt. of India are framing guidelines and the land is classified in Port and Port Allied areas and township areas. Further the township areas are classified in redevelopment and non-redevelopment i.e renewal areas/ MBPT will consider renewal of expired leases falling in renewal areas.
- 37. The obstructionists have prayed to keep the matter sine die, till the policy is framed by the Govt.for the settlement of the matters. It is pertinent to note that to frame guidelines for settlement of the matters and preparing master plan is a policy decision of the Govt.and Court cannot wait

for the policy decision of the Govt., hence the matter cannot be kept sine die,

therefore I answer point no.3 in negative.

As to point no.4

38. As per finding given on point no.1, the obstructionists have

complied the letter issued by the plaintiff and inview of the

T.R.No.52/2008, the plaintiff is bound to withdraw the present proceeding

and since the plaintiff failed to withdraw the present proceeding, it needs to

be disposed of, hence I answer point no.4 in negative.

As to point no.5

39. As per above discussion, the matter need not be referred to

mediation/ ADR under Sec.89 of C.P.C and it cannot be kept sine die till the

policy decision of the Govt on the representation made by K.P.Gala and

Associates. However, the obstructionist notice needs to be disposed of as

settled in view of the compliance made by the obstructionist, therefore order

needs to be passed on Exh.01 to dispose the matter, therefore I proceed to

pass the following order:-

Place: Mumbai

ORDER:

1. The application is partly allowed.

2. The prayer of the obstructionist to refer the matter to

mediation/ADR is rejected.

3. The prayer to keep the matter sine die is rejected.

4. It is held that the matter is settled between the parties as per

the policy of the plaintiff, hence the matter be disposed of.

5. Order passed on Exh.01 to dispose of the matter.

6. Parties to bear their own costs.

(S. S. Ghuge)

Judge

Date:17.03.2021 Court of Small Causes, Mumbai