

IN THE HIGH COURT OF MADHYA PRADESH AT

INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 13th OF JULY, 2023

WRIT PETITION No. 7128 of 2023

BETWEEN:-

S.S. INFRASTRUCTURE THROUGH ITS PARTNER SHRI AYUSH AGRAWAL S/O SHRI ASHOK AGRAWAL, AGED ABOUT 22 YEARS, OCCUPATION: BUSINESS 79, R.N.T. MARG AGRASEN CHOURAHA INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI VINAY SARAF, SENIOR ADVOCATE ASSISTED BY SHRI YASHPAL RATHORE, ADVOCATE)

AND

REAL ESTATE REGULATORY AUTHORITY THROUGH ITS SECRETARY BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI DEVAASHEESH DUBEY, PANEL LAWYER)

This petition coming on for admission this day, the court passed the following:

O R D E R

Heard on the question of admission.

02. The petitioner has filed the present petition being aggrieved by order dated 14.07.2022 passed by the Real Estate Regulatory Authority (RERA) and order dated 15.11.2022 passed by the M.P. Real Estate Appellate Tribunal.

02. Facts of the case in short are as under:-

2.1. The petitioner is partnership Firm duly registered under the provisions of Indian Partnership Act The petitioner is engaged in the business of colonization, development and multi-project of all kind of real estate having registered office at Indore. The petitioner / Firm is developing an industrial park in the name of 'S.S. Industrial Park' on a land bearing Khasra No.270/2/2/2, 270/2/1/2, 268/1/2, 268/2/2, 269/2/1 & 269/2/2. The petitioner has obtained all the necessary permission from Government Authority. According to the petitioner, though the provisions of the Real Estate (Regulation & Development) Act, 2016 (the Act of 2006) do not apply to the project of development of industrial park, but in order to avoid penalty and prosecution, the petitioner filed an application under Section 29(3) of the Act of 2016 before the RERA in order to ascertain whether the provisions of the Act of 2016 apply on the development of industrial project or not ?

2.2. According to the petitioner, the authority has not disposed of the application within 60 days from the receipt of the same. Thereafter, the application was filed under the provisions of the Right to Information Act, 2005 (RTI Act) to know the status of the application. The petitioner was supplied the true copies proceedings under the RTI Act, according to which, the application of the petitioner was disposed of as not maintainable. Thereafter, the petitioner preferred an appeal before the M.P. Real Estate Appellate Tribunal which was registered as Appeal No.150/2022. Vide order dated 15.11.2022, the Appellate Tribunal has dismissed the appeal with cost and with certain strong observations against the petitioner. Hence, the present petition before this Court.

03. Shri Saraf, learned Senior Counsel appearing for the petitioner

submits that provisions of the Act of 2016 apply to development of residential and commercial projects. The petitioner is starting development of an industrial park. As an abundant precaution, the petitioner approached the RERA under Section 29(3) of the Act of 2016 seeking clarification whether the provisions of the Act apply on the project of partnership Firm intending to develop a project or not ? Instead of answering the issue, the RERA has dismissed the same and did not inform the result. However, the note-sheet obtained under the RTI Act reveals that no cognizance has been taken on the application by the RERA. Thereafter, the petitioner approached the Appellate Authority who has also not given any opinion whether the provision of the Act of 2016 applies to the petitioner's project or not ? Learned counsel for the petitioner has placed reliance upon on an order dated 12.01.2021 passed by High Court of Gujarat At Ahmedabad in the case of *Meena Ben Chandravadan Rajgor v/s The Real Estate Regulatory Authority & 1 Other(s) (R/Special Civil Application No.14645 of 2022)*, whereby the petition was disposed of with the direction to the RERA to decide the complaint under the provisions of Section 29(4) of the Act of 2016. Shri Saraf submits that this petition may be disposed of with direction to the RERA to consider the application and take final decision.

04. Heard learned counsel for the parties at length and perused the record.

05. The petitioner approached the RERA in order to get advance ruling on applicability of the Act of 2016 on its development project. The petitioner is developing an industrial park, hence, approached the RERA under Section 29(3) of the Act of 2016 to get an opinion. Section 29 says that the authority shall meet at such place and follow such rules and provision with regard to the transaction and business as may be specified

by the regulation made by the authority. Sub-section (3) says that all the questions which come up before the meeting of the authorities shall be decided by the majorities of the votes by the members present and voting. Sub-section (4) provides that all the questions which come up before the authority shall be dealt with expeditiously and shall dispose of within a period of 60 days from the date of receipt of the application. Since sub-section (4) provides that the authorities shall dispose of the application within 60 days from the date of receipt of such application, therefore, the petitioner submitted an application before the authorities asking as to whether provisions of the Act of 2016 apply to the industrial project or not ? Except under the Excise Act, there is no such provision in the Act of 2016 to get an advance ruling from RERA.

06. Section 2(s) defines the development according to which, means carrying out the development of immovable property, engineering or other operations, in, on, over or under the land or making any material change in the immovable property or land and including redevelopment. Section 2(t) defines “development work” means external development work and internal development work of immovable property. Section 2(z) defines that immovable property includes the land, building etc. Section 2(zk) defines promoters means a person who constructs or causes to be constructed an independent building or a person who develops the land into a project. The project as per Section 2(zj) means a real estate project as defined in Clause (zn) and according to definition of real estate project means a development of building or a building consists of apartment or development of land into plots for the purpose of selling.

07. Section 4 provides for an application for registration of real estate project according to which, no promoter shall book, sale or offer for sell or

invite persons to purchase any manner any plot, apartment or building as the case may be in real estate project or part or in planning area without registration in real estate project with real estate regulatory authority established under the Act. Therefore, the petitioner ought to have submitted an application for registration of real estate project.

08. Section 5 of the Act of 2016 provides that on receipt of application under sub-section (1) of Section 4 the authority shall within a period of 30 days either grant registration or reject the application for the reasons to be recorded.

09. Shri Saraf, learned Senior Counsel for the petitioner submits that if the petitioner applies for registration, he will have to deposit the fee prescribed for registration as per the cost of deposit.

10. Therefore, it appears that in order to save the amount to be deposited for registration, the petitioner has tried to bypass the provision of Section 4 of the Act of 2016 and applied under Section 29(3) to get an advance ruling. This is totally against the intention of the Act of 2016. *Prima facie* petitioner's project comes under the category of real estate project and petitioner comes under the definition of promoters of a project which includes development of a land. Therefore, the petitioner is required to submit an application under Section 4 of the Act of 2016 for registration of real estate project. The RERA as well as Appellate Authority rightly declined to entertain the application under Section 29 of the Act of 2016 and the appeal as well.

The present Writ Petition is misconceived and is hereby dismissed.

(VIVEK RUSIA)
J U D G E