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WA-2857-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 16th OF JUNE, 2026

WRIT APPEAL No. 2857 of 2024

M.P. REAL ESTATE REGULATORY AUTHORITY BHOPAL

Versus

SHRI JI BUILDERS AND DEVELOPERS

.....
Appearance:

Shri Aryan Gupta - Advocate for appellant.

Shri Sanjay Agrawal - Senior Advocate with Ms. Tanishka Ajmani & and
Shri Arpit Agrawal - Advocate for respondents.
.....

ORDER

Per. Pradeep Mittal

This Appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 23.09.2024 passed by the learned Single Judge in W.P. No.19852/2023, whereby the writ petition filed by the Respondent herein was allowed with directions to the Appellant-Authority to process the registration of the real estate project namely "Krishna Orchid" in accordance with the statutory provisions of the Real Estate (Regulation and Development) Act, 2016 and the Madhya Pradesh Real Estate (Regulation and Development) Rules, 2017.

2. The Respondent, a duly registered real estate promoter firm, submitted an application under Section 4 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the RERA Act") seeking registration of its



proposed real estate development project on land bearing Khasra Nos. 212/29, 208/1, 212/36 and 212/27/2 situated at Village Khajuri Kalan, Tehsil Huzur, District Bhopal.

3. The Appellant-Authority, by its order dated 09.06.2023, rejected the said application for registration on the following grounds- First, non-submission of the diverted Khasra certificate, notwithstanding that agricultural land use had to be diverted to non-agricultural use under the applicable Land-Use Conversion Act. Second, alleged defects in the title of land arising from the sale transaction executed by Shanti Grah Nirman Sahkari Samiti Maryadit in the year 1999, on the ground that no permission of the Registrar of Cooperative Societies was obtained and the bye-laws of the Cooperative Society permitting sale to non-members were not produced. Third, non-production of the original Resolution Register of the Cooperative Society evidencing authorization for the 1999 sale transaction, thereby creating doubt regarding the validity and due authorization of the said transaction. And fourth, non-uploading of Income Tax Returns of the Respondent firm on the statutory portal, as mandated by Rule 3(1)(b) of the Madhya Pradesh Real Estate (Regulation and Development) Rules, 2017.

4. Aggrieved by the rejection order, the Respondent filed Writ Petition No. 19852/2023 before the learned Single Judge of this Court praying for quashing of the rejection order and issuance of directions to the Authority to proceed with the registration of the said project after due verification of title documents. The learned Single Judge, by the impugned order dated 23.09.2024, allowed the writ petition, holding inter alia that the writ petition was maintainable notwithstanding availability of statutory appeal under Section 44 of the RERA Act before the Real Estate Appellate Tribunal (REAT) as the said Tribunal was not effectively functional due to vacancies in posts of Judicial Member and Technical



Member. The learned Single Judge further held that the Authority had no jurisdiction to undertake detailed adjudication of disputed title, particularly regarding a transaction that had attained finality more than two decades prior and was supported by registered sale deeds and revenue records. The learned Single Judge also held that permission of the Registrar of Cooperative Societies, if required under the law prevailing in 1999, could not be mandated retrospectively, particularly after the amendment dated 04.01.2010 which modified the applicable provisions. It was further held that the deficiencies pointed out by the Authority were either curable in nature or were matters falling outside the regulatory purview of the Authority under Sections 4 and 5 of the RERA Act.

5. Accordingly, the learned Single Judge directed the Authority to proceed with the registration of the project after prima facie verification of title through registered sale deeds and connected revenue records, and granted sixty days' time for submission of the diverted Khasra certificate.

6. The learned counsel for the Appellant/Authority has submitted before us that the learned Single Judge has committed grave error in interfering with the rejection order dated 09.06.2023 and has ignored the statutory mandate of the Authority to verify legal compliance of applications before permitting registration. It is submitted that Section 44 of the RERA Act provides for an appeal before REAT against orders of the Authority, and the rule of exhaustion of alternative statutory remedy is a fundamental principle of constitutional jurisprudence. The Appellant contends that mere temporary non-availability of quorum should not be treated as nonavailability of remedy, and the Respondent should have awaited restoration of the Tribunal's quorum, as the non-functionality was temporary and not permanent. It is further submitted that Sections 4 and 5 of the RERA Act



read with Rule 3 of the RERA Rules mandate that promoters must submit documents relating to title, land-use permissions, and financial disclosures, and that the Authority's rejection was based on genuine compliance deficiencies. The learned counsel has emphasized that the object of RERA is protection of home buyers' interests through regulatory oversight, and permitting incomplete applications to be processed would defeat this object and encourage promoters to avoid statutory compliance.

7. It is further contended that Section 38 of the Madhya Pradesh Cooperative Societies Act, 1960 provides that transactions between a Cooperative Society and non-members are restricted, and Rule 29 of the Madhya Pradesh Cooperative Societies Rules, 1962 prescribes the compliance mechanism for such transactions. The Appellant argues that the transaction of 29.12.1999 involved sale by the Cooperative Society to non-members without evidence of due authorization and Registrar's permission, and therefore the learned Single Judge erred in directing registration without resolving this fundamental title defect. The Appellant further contends that the Respondent was granted adequate opportunity to cure the deficiencies but failed to do so, and merely granting further time without substantive compliance does not advance the interests of transparency and home buyer protection.

8. On behalf of the Respondent, learned Counsel has supported the impugned order and sought dismissal of the Writ Appeal, submitting that the learned Single Judge's judgment is well-reasoned, legally sustainable and properly balances the Authority's compliance-checking role with its limitation in not undertaking detailed adjudication of disputed titles.

9. We have heard learned counsel for both parties and carefully perused the entire record including the rejection order, the writ petition, the judgment of



the learned Single Judge, and the grounds of appeal filed before us.

10. The following questions arise for consideration: (i) Whether the writ petition was maintainable before the learned Single Judge despite availability of statutory remedy of appeal under Section 44 of the RERA Act? (ii) Whether the learned Single Judge committed error in interfering with the order dated 09.06.2023 passed by the Authority? (iii) Whether the deficiencies pointed out by the Authority constitute incurable defects warranting rejection of the registration application? and (iv) Whether any interference is called for in the exercise of appellate jurisdiction?

11. The first issue pertains to the maintainability of the writ petition despite availability of statutory remedy before REAT. It is admitted on record that at the relevant time when the writ petition was filed, the REAT was not functioning effectively owing to vacancies in the posts of Judicial Member and Technical Member, thereby preventing constitution of the Tribunal for hearing appeals.

12. It is a well-established principle of administrative law that the rule of exhaustion of alternative remedy is a principle of self-imposed restraint and judicial discretion exercised by High Courts in exercise of writ jurisdiction under Article 226 of the Constitution of India. This rule is not a bar upon the constitutional jurisdiction of the High Court but merely a guide for the exercise of discretion. The Supreme Court has repeatedly held that where a statutory forum is not effectively available, the remedy cannot be said to be efficacious.

13. In *PHR Invent Educational Society vs. UCO Bank and Others, 2024 INSC 297*, wherein it has been held that availability of alternative remedy does not completely bar exercise of writ jurisdiction under Article 226 of the Constitution. The Hon'ble Supreme Court observed:



"29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus: (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question; (ii) it has acted in defiance of the fundamental principles of judicial procedure; (iii) it has resorted to invoke the provisions which are repealed, and (iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance." Thus, the availability of alternative remedy is not an absolute prohibition but a rule of discretion.

14. Applying the aforesaid principles to the present case, it is evident that the statutory Tribunal (REAT) was not effectively available at the relevant time due to want of quorum. The non-functionality of REAT was not temporary in the legal sense, it was absolute non-availability of the forum for adjudication of appeals. The Respondent could not have awaited indefinite restoration of quorum while its registration application remained pending without determination. In *Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority*, the Hon'ble Supreme Court held that the rule of alternative remedy is a rule of prudence and self-restraint, not a rule of law barring the exercise of jurisdiction under Article 226 of the Constitution. Where the remedy is not efficacious or the circumstances warrant, the High Court would be justified in exercising its



extraordinary jurisdiction. We, therefore, find that the learned Single Judge was justified in entertaining the writ petition. The finding on maintainability does not call for interference.

15. The next critical issue pertains to whether the learned Single Judge was justified in interfering with the order dated 09.06.2023 passed by the Authority. This requires detailed examination of the statutory framework governing the Authority's powers and limitations under the RERA Act, 2016. Section 4 of the RERA Act requires that a promoter seeking registration shall submit an application to the Authority along with documents relating to ownership and title of land, land-use permission, financial and structural capacity, and other documents as prescribed under Rules 3 and 4 of the RERA Rules, 2017. Section 5 of the RERA Act provides that the Authority may reject an application only if the same is incomplete or contains discrepancies which cannot be corrected. Importantly, the Authority must record reasons for rejection and must grant an opportunity of hearing to the promoter. Thus, the statute contemplates a regulatory regime with built-in safeguards and opportunities for compliance.

16. This Court is of the firm view that the scheme of RERA is both regulatory and facilitative, not purely adjudicatory. The RERA Act contemplates that the Authority performs a regulatory function that is, it verifies prima facie compliance of statutory requirements and ensures transparency. The Act does not confer upon the Authority the jurisdiction of a Civil Court to adjudicate disputed questions of title, proof of ownership, or to undertake detailed forensic investigation into historical transactions. The distinction is critical: the regulatory function entails verification that documents are produced and prima facie show compliance; the adjudicatory function involves a Court adjudicating disputed title after hearing evidence and applying law. If serious disputes arise regarding title,



such disputes must be adjudicated by competent forums Civil Courts, Revenue Courts, or specialized tribunals in accordance with law. The RERA Authority cannot undertake a 'collateral adjudication' of title disputes. To do so would transform it from a regulatory authority into a Civil Court, contrary to the statute's scheme.

17. The Authority's primary concern was the sale transaction executed by Shanti Grah Nirman Sahkari Samiti Maryadit on 29.12.1999 to the predecessor-in-interest of the Respondent. The Authority rejected the application on the ground that Section 38 of the Madhya Pradesh Cooperative Societies Act, 1960 restricted such transactions and no evidence of Registrar's permission was available. Section 38 of the Cooperative Act, 1960 provides that no Cooperative Society shall sell or mortgage its immovable property except with the sanction of the Registrar of Cooperative Societies and in the manner provided by bye-laws. Rule 29 of the Madhya Pradesh Cooperative Societies Rules, 1962 prescribes the procedure for obtaining Registrar's sanction for such transactions. Further, Section 72-B was inserted by amendment dated 04.01.2010, modifying the earlier restrictive provisions.

18. The pivotal fact is that the transaction in question was executed on 29.12.1999 more than twenty-five years prior to the present proceedings. The following facts are undisputed: registered sale deeds were executed in the names of the original buyers; mutation of the land was completed in the names of the buyers on 09.02.2000; and the land has remained in the possession and occupation of the successors-in-interest without interruption and without challenge for more than two decades. Under settled principles of Indian land law, a transaction that has been completed, registered, and undisturbed for twenty to twenty-five years achieves finality. The doctrine of "settlement of title" recognizes that after a



sufficiently long period of unchallenged possession coupled with registered title, the transaction cannot be reopened or collaterally attacked.

19. Furthermore, Section 72-B was inserted only on 04.01.2010 almost eleven years after the 1999 transaction. A subsequent legislative amendment cannot be applied retrospectively to invalidate a completed transaction unless the amendment is expressly declared to be retrospective. No such retrospective application is evident in the statutory text or legislative history. The principle of non-retroactive application of statutes is well-settled in Indian jurisprudence and is enshrined in Article 20(1) of the Constitution of India. A statute does not apply retrospectively unless expressly so declared. Therefore, the Authority could not have invalidated a transaction dating back to 1999 merely because no Registrar's permission was produced, particularly when the transaction had achieved finality through registration and mutation, and when the applicable law has since been amended.

20. The proper and permissible approach for the Authority would have been to verify the chain of title through registered documents extending from 1999 to the present Respondent, verify continuity of possession and occupation, and if the chain of registered documents is complete and possessory continuity is demonstrated, prima facie compliance with title requirement would stand satisfied. If a third party wished to challenge the 1999 transaction on grounds of alleged non-compliance with Cooperative Act provisions, the third party would have remedies before Civil Court, not before the RERA Authority. The learned Single Judge's direction for verification of title through registered documents and connected revenue records is entirely appropriate and falls squarely within the Authority's regulatory purview. The said finding does not call for interference.



21. Learned counsel of the appellant invites our attention towards the relevant provision of co-operative society act 1960 which is given as under for consideration, argument of the counsel is that the writ court has wrongly interpreted the provision for decide the issue.

22. 36. Borrowings.- A society may receive deposits and loans from the State Government, Banks, Financing bodies, Corporate Bodies under any law, operating in the State and individuals under the provision of the byelaws of the society. It may also receive funds as a share capital under specific agreement or approved project by way of granting nominal membership.

23. 37. Restrictions on loans.-(1) No society shall make a loan to- (a) any person who is not a member; (b) any member on the security of its own shares; (c) any member on the security of a non-member; Provided that a society may make loans to another society and/or nominal member as provided in the byelaws of the society. (1-A) a society making a loan to its members who have been provided with "Bhoo-Adhikar Avam Rin Pustika" prescribed under section 114-A of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959) shall enter all transactions of loans; advances and recoveries thereof in the aforesaid Bhoo-Adhikar Avam Rin-Pustika. (1-B) Notwithstanding anything contained in this Act, rules made thereunder and byelaws of the society, in case of an omission in making entry of a loan or advance made to members of the society, it shall be presumed that no such loan or advances has been made unless proved otherwise by the society; (2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit. (4) If an officer or employee of a society entrusted with the work of making an entry of any transaction of loans, advances and recoveries thereof in the "Bhoo-Adhikar avam Rin-Pustika" referred to in sub-section (1-A) fails to make such entry in the said



Pustika the Registrar may by order impose a penalty on him of any amount not exceeding rupees five hundred. The order imposing a penalty shall be enforced in accordance with the provisions of section 85.

24. 38. Restrictions on other transactions with non-members.- Save as provided in sections 36 and 37, the transactions of a society with persons other than members shall be subject to such restrictions, if any, as may be prescribed.

25. 29. Restrictions on transactions with non-members- No society shall enter into any transactions with a person other than a member except those referred to in Sections 36 and 37, unless, -(i) the bye-laws of the society permit it to enter into such transactions, and (ii) previous sanction of the Registrar has been obtained by the society.

26. 72-B.1(g) if a member fails to pay his share of legal expenses, maintenance and services, as the case may be, within the prescribed time, the society shall impose a surcharge at the rate of 20% for a period not exceeding three months and if default continues beyond three months, the services shall be discontinued forthwith: Provided that such services shall not be discontinued unless the member concerned is given a reasonable opportunity of being heard by the committee in this behalf.

27. After carefully considering the above-mentioned legal provision, we are the opinion the writ court has rightly held that, there is no permission of Registrar was required for transferring of land prior to 04.01.2010. Said amendment introduces a liability on societies to seek permission of Registrar before entering transactions. Since liability is imposed by said amendment, therefore, said amendment will not operate retrospectively. It will be applicable prospectively i.e. on transactions which are done after 04.01.2010. secondly there



is no force on the argument of the appellant that the according the provision of section 36 and 38, the previous section of registry is required for transfer the property to other then the member of society, we are agreeing the argument of the respondent that the above provision are required for only the lone transitions.

28. The Authority had raised four categories of deficiencies. Regarding non-submission of diverted Khasra certificate, Rule 3(1)(d) of the RERA Rules, 2017 requires submission of diversion certificate or orders from the competent revenue authority if the land is agricultural. The Respondent had not submitted the final diverted Khasra certificate, though proceedings had been initiated. The record indicates that the Tehsildar's report dated 10.05.2023 shows that diversion proceedings were substantially completed. This is clearly a curable deficiency, as the Respondent merely needed to obtain the final certificate from the Revenue Department. The learned Single Judge's grant of sixty days for submission of this certificate was reasonable and proportionate. The Authority can verify compliance of this requirement without undue delay.

29. As discussed extensively above, the alleged title defects arising from the 1999 transaction constitute no deficiency at all. The Authority had no jurisdiction to re-adjudicate a settled transaction of twenty-five years' standing. This "deficiency" should not have been raised in the first instance.

30. Regarding non-production of the original Resolution Register of the Cooperative Society to evidence the authorization for the 1999 sale, this is an historical document predating the present application by twenty-five years. It may no longer be available or traceable. However, registered sale deeds, which are conclusive proof of title under the Registration Act, have already been produced. A registered deed is prima facie proof of ownership. To demand historical internal records of a cooperative from 1999, twenty-five years post-facto, is to impose an



impossible burden of proof. The Authority's insistence on this document amounted to asking the Respondent to prove a negative or to furnish evidence from a party no longer party to the transaction.

31. Regarding non-uploading of Income Tax Returns, Rule 3(1)(b) of the RERA Rules, 2017 requires submission of Income Tax Returns of the promoter firm. This is clearly a procedural and administrative requirement designed to ensure financial transparency and disclosure. It is not a substantive requirement affecting title or legitimacy of ownership. This deficiency is eminently curable, as the Respondent can upload the Income Tax Returns within the time granted by the learned Single Judge. The fact that a procedural requirement remains unfulfilled at the time of application does not, by itself, warrant rejection of the entire application if the fundamental substantive requirements title, financial capacity to construct are otherwise satisfied.

32. The purpose of the Income Tax Return requirement is to ensure transparency and disclosure. The Authority was justified in pointing out this deficiency. However, a defect being curable and of a procedural nature, rejection of the entire application solely on this ground would not advance the object of the RERA Act, which is to facilitate orderly registration while ensuring statutory compliance and protection of home buyers. The learned Single Judge adopted a balanced approach by permitting cure of this deficiency instead of terminating the registration process. This approach is legally sound and consonant with the facilitative scheme of RERA.

33. Before proceeding to final conclusions, it is apposite to note the limited scope of interference available to an intra-court appellate bench. A Writ Appeal is not a complete rehearing of the matter on facts and law. The appellate bench should not interfere merely because another view is possible or even if a



better view appears possible. Interference is warranted only if the judgment of the Single Judge suffers from patent illegality violation of settled law; perversity a conclusion entirely unsupported by facts or evidence; manifest arbitrariness reasoning devoid of logic or principle; or jurisdictional error exercise of power without jurisdiction.

34. This principle has been reiterated by the Hon'ble Supreme Court in *Management of Narendra & Company Pvt. Ltd. v. Workmen of Narendra & Company*, (2016) 3 SCC 340, wherein the Court held that in an intra-court appeal, on a finding of fact recorded by the Single Bench, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge.

35. Applying this principle of restraint to the present case, we find that the learned Single Judge has carefully analyzed all aspects of the matter, consulted relevant statutory provisions, referred to applicable case law, and arrived at findings that are well-reasoned and legally sustainable. The learned Single Judge's judgment exhibits no patent illegality, perversity, manifest arbitrariness, or jurisdictional error. The learned Single Judge has correctly understood the scheme of the RERA Act as both regulatory and facilitative not a tool for perpetual rejection of applications on technical grounds. The RERA Act is intended to protect home buyers' interests by ensuring transparency and regulatory compliance, not by erecting impossible hurdles. Genuine projects should not be stalled or rejected on curable procedural deficiencies, the Authority should remain within its regulatory purview and not transgress into adjudication of disputed



titles, home buyers' interests should be protected through transparent disclosure and timely registration rather than indefinite pendency, and substantive title issues should be adjudicated by competent forums, not resolved administratively by RERA Authority.

36. We are satisfied that the learned Single Judge has assigned cogent, valid and legally sustainable reasons for the orders passed in the impugned judgment. The findings recorded are based upon proper appreciation of the statutory provisions of the RERA Act, 2016, the RERA Rules, 2017, the Cooperative Act, 1960, the Cooperative Rules, 1962, and the material available on record. The judgment is fortified by reference to settled principles of administrative law, statutory interpretation, and applicable case law. We find no patent illegality, perversity, manifest arbitrariness or jurisdictional error that would warrant interference in the present Writ Appeal.

37. For the foregoing reasons, we find no merit in the present Writ Appeal. The order dated 23.09.2024 passed by the learned Single Judge in W.P. No. 19852/2023 is AFFIRMED. The Authority is directed to proceed with the registration of the real estate project "Krishna Orchid" in accordance with the statutory provisions of the RERA Act, 2016 and the RERA Rules, 2017, after due verification of title through registered documents and connected revenue records, and after the Respondent furnishes the diverted Khasra certificate and other required documents within the time stipulated by the learned Single Judge.

No order as to costs.

(VIVEK RUSIA)
ACTING CHIEF JUSTICE

(PRADEEP MITTAL)
JUDGE

