

Does the transition from sole proprietorship to partnership incur an additional 5% charge on land cost, Bombay High Court Answers

Gemini Developers

... Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

Case No: Writ Petition No. 103 of 2020

Date of Judgement: 15th December, 2023

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Facts:

- Petitioner M/s Gemini Developers is the owner and developer of a private property declared as a 'Slum' under the Maharashtra Slum Areas Act, 1971. The property has 172 eligible slum dwellers.
- In 2003, M/s Gemini Developers, a sole proprietorship of Mr Ramesh Malhotra was appointed as the Developer. Between 2006-2016, eligible slum dwellers were rehabilitated.
- In 2015, the proprietorship was converted to a partnership firm, inducting Mr Malhotra's wife and son as partners to ensure the project is completed in case

of Mr Malhotra's demise.

- Mr Malhotra expired in March 2016, leaving behind a Will bequeathing the project to his wife and son.
- Society represented by some non-cooperative members filed an appeal before the AGRC challenging the appointment of Petitioner as Developer. AGRC upheld the appointment in its order dated 28.06.2019.
- However, AGRC imposed two additional conditions – payment of 5% of land cost as per SRA office order dated 23.03.2015 which applies in case of change of Developer, and completion of project within 24 months.
- Petitioner has challenged the 5% payment condition in this writ petition.

Arguments By Petitioner:

- Conversion of proprietorship to partnership was to pass on the project to legal heirs, not to induct a new Developer.
- SRA office order exempts payment if change is due to death of sole Developer towards legal heirs. Petitioner's case falls under this exemption.
- AGRC failed to consider this exemption and mechanically passed the directions.

Arguments By Respondents:

- SRA office order applies in case of change of partners or share transfer after death also.
- Here, proprietorship was first converted to partnership, so clause regarding change of partners applies.
- Later, after Mr Malhotra's death, his share transfer happened. So while exemption applies for this, payment is still due for the first change.
- Impugned directions are correctly passed.

Court's Opinion and Decision:

- Intent behind SRA office order is to charge fees

primarily for third party induction. Exemption is given in case of changes towards legal heirs after death.

- Here, Mr Malhotra converted proprietorship to partnership only to pass on project to wife and son, not to induct third parties.
- After his unfortunate demise within 2 months, his Will bequeathed project to wife and son.
- Thus Petitioner's case squarely falls under exemption clause. Impugned direction regarding 5% payment is quashed and set aside.

Referred Laws and Sections:

- Articles 226 and 227, Constitution of India
- Maharashtra Slum Areas Act, 1971
- SRA Office Order dated 23.03.2015