

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-89-2020**

M/s. Despamont

... Appellant

Versus

Edcon Real Estate Developers & Ors.

... Respondents

Shri Abhay Nachinolkar, Advocate for the Appellant.

Shri R. Menezes, Advocate for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 30th July 2020****P.C. :**

The respondents 1 to 3 are the developers, and the respondents 4 to 19 are ostensibly the owners. These owners have given a piece of land to the respondents 1 to 3 for development; that is, for a project of residential and commercial construction. The appellant, a rival claimant to the property, complained to the Real Estate Regulatory Authority that the respondents had undertaken the project without any registration under Section 3 of the Real Estate (Regulation & Development) Act, 2016 ('The Real Estate Act'). But the Regulatory Authority dismissed the appellant's complaint, through an order, dated 18.12.2019.

2. Aggrieved, the appellant has approached the Administrative Tribunal by invoking Section 44(1) of the Real Estate Act. Through the impugned judgment, dated 20.03.2020, the Administrative Tribunal allowed the appeal in part. Though it has upheld the appellant's contention that the project required registration under Section 3 of the Act, it has, however, refused to impose any penalty on the respondents for

their statutory violation. So, contending that Section 59 of the Act mandates imposition of penalty, the appellant has filed the Second Appeal under Section 58 of the Act.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents. Admit.

4. Indeed, aggrieved by the impugned judgment, the respondents, on their part, have already filed Second Appeal No.LD-VC-OCW-24-2020, which stood admitted on 02.06.2020. This Court framed substantial questions of law, too. Now, the appellant's grievance is confined to whether the appellate authority ought to have imposed the penalty as a mandatory consequence to its holding that the respondents have not had the project registered under Section 3 of the Act. Section 59 of the Act employs the expression "*shall*" for the imposition of the penalty. Then should it be treated as a mandatory requirement without any element of discretion left for the adjudicatory authority? I, therefore, frame the following substantial question of law:

(i) Given the mandatory expression "*shall*" in Section 59 of the Real Estate (Regulation & Development) Act, 2016, does the adjudicatory authority, including the appellate authority, have any discretion left in refusing to impose penalty, despite a clear finding that the respondents have violated Section 3, though as to the quantum of penalty discretion remains intact?

5. Shri R. Menezes, the learned counsel waives notice to the respondents.

Post the matter along with Second Appeal No.23 of 2020.

DAMA SESHADRI NAIDU, J.

NH