

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1589 OF 2015

Ascent Constructions Pvt. Ltd. and another .. Petitioners

Versus

Municipal Commissioner,

Thane Municipal Corporation and others .. Respondents

Shri. P. K. Dhakephalkar, Senior Advocate with Shri. Naushad Engineer, Ms. Anupama Agarwal & Mr. Vineet Unnikrishnan i/by M/s. Federal & Rashmikant, for the Petitioners.

Shri. Shridhar V. Patkar, for the Respondents No.2, 3, 14, 17 & 18.

None for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 24th FEBRUARY, 2015

PC.

1. At the outset the Learned Senior Counsel seeks the deletion of Respondents No.1, 4 to 13, 15 and 16 as in the context of the challenge raised in the above Petition they are formal parties. The said Respondents are accordingly deleted at the risk of the Petitioners.

2. The Writ Jurisdiction of this Court is invoked against the order dated 16.01.2015 passed by the Learned 5th Joint Civil Judge, Senior Division, Thane by which order the application Exh.180 filed by the

Plaintiffs seeking permission to produce on record Gaon Namuna (Village Map) of the suit property came to be rejected. It is required to be noted that the parties have closed their evidence and thereafter the instant application Exh.180 came to be filed by the Plaintiffs to produce the said Village Map. In the said application Exh.180, it is the case of the Plaintiffs that though the Map was procured by their Architect in the year 2012, it was lying with the said Architect and it is during the course of the discussion in respect of the Maps produced by their Defendants that the Architect informed them of the availability of the said Village Map with him. The said application Exh.180 is therefore founded on the said fact. The Trial Court considered the application and since there was a delay in producing the Map which according to the Trial Court was with the Plaintiffs has rejected the said application. The Trial Court has construed the case of the Plaintiffs that the Map was available with the Architect to mean that since it is the Plaintiffs Architect the Village Map was available to the Plaintiffs, however as indicated above it is the case of the Plaintiffs that in the course of the discussion in the year 2014 with the Architect that the Plaintiffs came to know that the Village Map is available with the Architect. The said case of the Plaintiffs is sought to be controverted by the Learned Counsel for the Respondents No.2, 3, 14, 17 and 18 who are the main contesting Defendants on the ground that the receipt issued by the

authority discloses that it is in the name of one Munish Doshi who is the Director of the Plaintiffs. In my view assuming that the application was made in the name of the one of the Director of the Plaintiffs, the fact remains that the application Exh.180 has been rejected on the ground that there is a delay in producing document which was available to the Petitioners i.e. Plaintiffs. It is well settled that the parties should be allowed to lead evidence, if the same results in furthering the cause of justice. It is also well settled that the parties should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. The underlying principle is that there should be a fair trial which gives equal opportunity to the parties. The Learned Senior Counsel appearing on behalf of the Petitioners states that the Petitioners only seek permission to produce the Map on record and do not desire to lead any further evidence. In my view the interest of justice would be served, if the impugned order is set aside and the following directions are issued-

- I) The application Exh.180 is stand allowed.
- II) The Plaintiffs would be entitled to produce the Village Map of which production was sought vide Exh.180. The Trial Court would take the same on record.

III) This Court does not express any opinion as regards whether the Map is to be accepted in evidence or its evidentiary value, it is for the Trial Court to decide the same.

IV) If the Map is accepted in evidence, it would be open for the Defendants to lead rebuttal evidence, if they so desire. The same to be done by the Defendants as would be directed by the Trial Court.

V) Since the trial has already been expedited the Trial Court would endeavour to dispose of the suit within time frame which has been fixed for the disposal of the suit. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]