

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5061 OF 2015
WITH
CIVIL APPLICATION NO.2788 OF 2015**

Rainbow Flat & Shop Owner's
Association & Ors.

... Petitioners

V/s.

State of Maharashtra and Ors.

...Respondents.

Mr. Pralhad D. Paranjape for the Petitioners.

Mrs. M. P. Thakur, AGP for Respondent No.1.

Mr. Gopal Krishna Shivram Hegde for Respondent No.2.

Mr. Sandeep V. Marne for Respondent No.3.

Ms. Kiran Bagalia i/b Mr. Krishna Kelkar for Respondent Nos. 4 to 23.

Mr. Sandeep Thakur, Applicant in person in CA 2788/2015.

CORAM : A.S.OKA &

G. S. PATEL,JJ.

DATE : 20th NOVEMBER, 2015

P.C.:

. Heard the learned counsel for the petitioners, the learned counsel for the respondent No.2, the learned counsel for the respondent No.3 and learned counsel for the respondent Nos.4 to 23.

2. The learned counsel appearing for the respondent No.3- Municipal Corporation tenders across the bar a compilation of orders passed by the Municipal Commissioner as well as a fresh commencement certificate dated 17 November 2015.

3. The learned Counsel appearing for the petitioners seeks leave to amend the petition for incorporating a challenge to the fresh commencement certificate. Considering the nature of the proposed challenge, the petitioners will have to file a fresh petition. Therefore, the

learned counsel for the petitioners seeks continuation of ad-interim relief which is operative till today.

4. The learned counsel appearing for the respondent Nos.4 to 23 opposes the said prayer on the ground that as the challenge in the petition does not survive, the petitioners cannot seek continuation of ad-interim relief.

5. We have perused the grounds in the writ petition. The writ petition was admitted wherein the challenge was to the earlier commencement certificate dated 8 September 2010. Some of the grounds of challenge in this petition will be available to the petitioners in the proposed fresh petition.

6. The learned counsel for the respondent No.2 states that in view of the refusal of the said respondent to grant No objection certificate, the commencement certificate could not have been granted.

7. In any case, if this petition was to remain pending, in terms of clause 5 of the ad-interim order passed by this Court on 20 July 2015, the respondent Nos.4 to 23 will have to apply to this court for grant of permission to commence construction on the basis of the modified commencement certificate dated 17 November 2015.

8. Therefore, while permitting the petitioners to withdraw this petition with liberty to file a fresh petition for challenging the modified commencement certificate as well as for claiming other appropriate reliefs, the ad-interim relief granted in terms of clause 4 of order dated 20 July 2015 will have to be continued for a period of one month from today.

Accordingly, we pass the following order:

ORDER

- i) The petition is disposed of as withdrawn with liberty to file a fresh petition for challenging the commencement certificate dated 17 November 2015 as well as for claiming other reliefs;
- ii) Ad-interim granted in terms of clause 4 of order dated 20 July 2015 will continue to operate for a period of one month from today;
- iii) All contentions of the parties on merits are kept open;
- iv) In view of disposal of the Petition, Civil Application does not survive and the same is disposed of.

(G. S. PATEL, J.)

(A. S. OKA, J.)