

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

WRIT PETITION NO. 5362 OF 2014

M/s. Hari Om Builders and Developers & Ors. ... Petitioners
V/s.
Shri. Hari Park Housing Society & Ors. ... Respondents

None for the petitioner.

Mr. Nitin Gangal, for respondent no. 1.

Mr. A.D. Kango, for respondent nos. 2 to 4.

CORAM :A.P BHANGALE, J.

DATE : 27th March, 2015.

P.C.

1. Grievance is made before this court that though petition is pending since long, no one is appearing on behalf of the petitioners. The Petitioners are seeking adjournments repeatedly, since October 28th, 2014.

2. By this petition, the petitioners-M/s. Hari Om Builders and Developers and Others have prayed for quashing and setting aside of order and certificate dated 28/02/2014 issued by The Competent Authority and District Deputy Registrar Co-operative Society of Raigad, Alibag District. It appears that developers had approached the said authority intending to construct a residential complex and also praying for additional FSI which was consumed for D.P.Road in respect of plot no. 3 situated at Mauje-Ris, Taluka-Khalapur, Dist: Raigad at Survey No. 38/2018.

3. Since the petitioner had claimed additional FSI, in lieu of an area of about 469 Sq. mtrs. kept reserved for D.P. Road in the neighbourhood residential building constructed by the petitioner and also sought for deemed conveyance in respect of land Survey No.34/2018 ad-measuring 0.69-0 hectare, the Competent Authority and District Deputy Registrar Co-operative Society, Raigad, Alibag District, approved the right of deemed conveyance bearing No. 134/2013 and certified accordingly. But in respect of demand for increased FSI in lieu of the area consumed for D.P. Road in the neighbourhood residential building constructed by the petitioner, the Competent Authority refused consider the prayer for increased FSI on the ground that the authority had no jurisdiction to grant such increased FSI.

4. Learned Advocate for the respondent no. 1 submitted that the petitioner ought to have approached the Competent Planning Authority for the District Alibag-Raigad, so as to seek such relief of increased FSI as sought for by them.

5. My attention is invited to provisions of the Maharashtra Regional and Town Planning Act 1966 with specified reference to section 44 where by an application may be made to the Planning Authority in a prescribed format giving necessary particulars to Planning Authority in respect of the development plan for the area can regularized permission for constructions in confirmative with the development plan for the area. Such Planning Authority when approached u/s. 44 of the Maharashtra Regional and Town Planning Act 1966 can consider grant of permission conditional or without condition or may refuse permission and communicate the decision

accordingly to the applicant. Planning authority is responsible and may take decision so as to ensure that development control regularizations in operation according to the law, are not violated, whenever such permission is to be considered u/s. 45 of Maharashtra Regional and Town Planning Act 1966, the planning authority need to consider the final development plan or proposal in respect of development of the area concerned. Since development is intended in the area of District Raigad and Alibag and District Deputy Registrar Co-operative Society of Raigad, Alibag was not Competent Authority before whom a prayer for increased FSI can be made.

6. The said authority by impugned order rejected the application for increased FSI and rightly so as it is necessary for the petitioners to move the appropriate Planning Authority for the District Raigad and Alibag under the Maharashtra Regional and Town Planning Act 1966 or District Collector concern for the District Raigad, Alibag was that Competent Planning Authority is apprised of the proposed development, increased FSI sought as well as regulated and lawful development in respect of area concerned. It is open for the petitioner to move such application before the Competent Authority.

7. With these observations I do not find any reason to keep the petition pending. Hence petition stands disposed of. No order as to costs.

(A.P. BHANGALE, J.)