

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

CIVIL APPLICATION NO. 121 OF 2015
IN
PUBLIC INTEREST LITIGATION NO. 182 OF 2009

Patel Group & Co. & anr.	...	Applicants
IN		
Kaustubha Dattatraya Gokhale	...	Petitioners
v/s.		
State of Maharashtra & ors.	...	Respondents

Mr. S.U. Kamdar, Senior Counsel a/w. Sanjay Kadam, Ms. Apeksha Sharma and Sanjeev Kadam i/b. Kadam & co. for the applicant.

Mr. A.S. Rao for respondent no.2.
Mr. P.G. Sawant, AGP for the State.
Mr. Upendra Lokegaonkar i/b. N.R. Prajapati for Union of India.
Mr. P.G. Lad for MHADA, respondent no.11.
Ms. Nirja Patani i/b. Mrs. Chitra Phadke for respondent no.10.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

10th December, 2015.

P.C.

The applicant Patel Group & Co. & another has filed present application in Public Interest Litigation No. 182/2009 for the following reliefs:

“This Hon'ble Court may be pleased to order and direct KDMC to sanction amended building plans as submitted vide Applicant's architect's letter dated 27th January, 2015 (being Exhibit “I” hereto) and to grant them Revised Development Permission as provided in this Hon'ble Court's order dated 5th May, 2015 (being Exhibit “K” hereto)”

2. The applicants state that they had submitted a proposal for amalgamation to the Kalyan-Dombivali Corporation. By an order dated 2nd July, 2015 the Corporation rejected the said proposal observing that in view of the orders passed by this Court in PIL No. 182/2009 new permission for construction is not to be granted by the Corporation.

3. Learned Senior Counsel Shri Kamdar appearing for the applicant submits that the occupants of Vishwananda Co-operative Housing Society residing in the buffer-zone are to be accommodated in the redevelopment project. The redevelopment project is already sanctioned. It is submitted that due to buffer-zone and the building control line demarcated by State for highway and national highway, no construction could be carried out in the said buffer-zone. Learned Counsel submits that there would not be any violation of order of the Court in case the amalgamation application is decided by the Corporation.

4. The learned Counsel appearing for MHADA placed reliance on affidavit-in-reply filed through Smt. R.R. Joshi, Assistant Architect Planner. The deponent vide her reply in paragraph -7 states as under:-

“ I say that MHADA has granted redevelopment NOC to 1 to 4

societies enlisted hereinabove and are awaiting for subsequent sanction from KDMC. I say that this is the case of amendments in plans already approved by KDMC and no new development is undertaken/proposed on the said land. I say that after obtaining subsequent sanction from KDMC the existing occupants shall be vacated and shall be shifted in temporary premises (transit accommodation) on rental basis. I respect to submit that the redevelopment is necessary, firstly because the old buildings are in dilapidated condition, secondary the existing occupants shall be given decent and proper occupation/house by availing the scheme by Government of Maharashtra. I say that, as this is case of redevelopment, no new development has been undertaken on this land. I say that after the permission has been granted the occupants shall vacated in the temporary premises on rental basis.”

5. The learned Counsel appearing for Kalyan Dombivali Municipal Corporation Mr. Rao submits that the proposal application filed by the applicants could be dealt with in accordance with law.

6. Learned Senior Counsel Shri Kamdar submits that in respect of redevelopment (LIG 1-A) IOD was granted on 17th February, 2011. Out of 66 occupants, 30 occupants have already vacated the premises. Learned Counsel submits that by an order dated 15th June, 2015 this Court had permitted the proposal of applicant Tycoon Avanti Projects Ltd. to be considered (Civil Application No. 77/2015).

7. We have perused the order passed by us in PIL No. 182/2009, the record placed before us, the sanctioned Lay-Out Plan by the Corporation. The entire Lay-Out plan is drawn by MHADA on various plot survey

numbers of Chickanghar, Kalyan. Under the Lay-Out plan various blocks would be re-developed by demolishing the old buildings and occupying the inhabitants of those buildings.

8. In view of the facts and submissions as stated above, we observe that KDMC is entitled to deal with the amalgamation proposal submitted by the applicant concerning Vishwananda Co-operative Housing Society on its own merits and in accordance with law. We do not express any opinion on the merits of the said proposal.

9. With aforesaid observations, Civil Application is disposed of.

(S.B. SHUKRE, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)