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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8757 OF 2015

M/s.Raj Project and Infrastructure

.. Petitioner

Vs.

Mira-Bhayandar Municipal Corporation and anr. .. Respondents

Shri A.A.Kumbhakoni, Senior Advocate i/b Mr.Sandesh D.Patil, for the Petitioner.

Ms.Pooja Singh i/b Shri N.R.Bubna, for Respondent No.1.

Shri V.S.Gokhale, AGP for Respondent No.2 – State.

CORAM : A.S. OKA & VL. ACHLIYA, JJ
DATED : 01st OCTOBER 2015

P.C. :

. Not on board. Taken on board.

2. Heard the learned senior counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned AGP for the second respondent.

3. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 18/05/2015 (Exhibit 'G' to the Petition). By the said notice, the first respondent – Municipal Corporation restrained the petitioner from carrying on any further construction of the building no.3. The Municipal Corporation recorded in the impugned communication that the work of construction of parking building which was to be handed over to the

Municipal Corporation has been completely stopped.

4. When this Petition came up before this Court earlier on 15/09/2015, the learned counsel appearing for the first respondent-Municipal Corporation stated that the proposal of the petitioner for finalizing the height of the parking building has been under consideration of the Municipal Corporation. Accordingly, on the earlier date, the learned Counsel appearing for the Municipal Corporation has handed over specifications regarding the height of the parking building which the petitioner is under obligation to construct and hand over to the Municipal Corporation.

5. There is an undertaking dated 30/09/2015 filed by Shri Mukesh J. Parmar, a partner of the petitioner firm. Paragraphs 1 to 3 of the said undertaking read thus:

1. I undertake that the petitioner would complete the construction of the parking building as expeditiously as possible, but not later than 4 months from the date of execution of this undertaking and hand over the possession of the same to the respondent No.1 Municipal Corporation.
2. I undertake that the petitioner shall not apply for Occupation Certificate in respect of building No.3 till the petitioner offers duly constructed parking building to the respondent Corporation.
3. The petitioner also undertakes that the petitioner shall not handover possession of the flats constructed in the building No.3 to the purchasers till the petitioner offers duly constructed parking building to the respondent Corporation.

6. We accept the undertakings contained therein. The undertakings take care of the right of the Municipal Corporation. For

the sake of clarification, we must record here that the building no.3 subject matter of the aforesaid undertaking is the building no.3 described in the commencement certificate dated 12/12/2013 issued by the Municipal Corporation which consists of part ground plus 13 upper floors having an area of 5183.14 sq.meters. It thus follows that in clauses 2 and 3, the reference to the said building no.3 is to the building consisting of part ground plus 13 upper floors.

7. In view of the undertakings, the very purpose of issuing the impugned communication does not survive. Accordingly, we dispose of the Petition by passing following order :-

- (i) We accept the undertakings of Shri Mukesh J.Parmar in the affidavit dated 30/09/2015 subject to clarification made above. In view of the undertaking, the impugned communication dated 18/05/2015 stands set aside;
- (ii) In the event of any breach committed by the petitioner of any of the undertakings, apart from adopting the remedies under the Contempt of Courts Act, 1971, it will be open for the Municipal Corporation to take appropriate action in accordance with law;
- (iii) The Petition is disposed of in the above terms.

(VL. ACHLIYA, J)

(A.S.OKA, J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgement/Order.**