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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 223 OF 2008**

1. Bombay Environmental Action Group,
a Society registered under
the Societies Registration Act,
having its office at 203 Rajendra Chambers,
19, Nanabahi Lane, Fort,
Mumbai – 400 001

2. Hema Ramani,
of Mumbai Indian Inhabitant,
Having her office at 80, Empire Building,
2nd Floor, 134/136 Dr. D. N. Road,
Mumbai – 400 001

...Petitioners

Versus

1. The State of Maharashtra, through
a) Secretary,
Urban Development Department
b) Secretary, Revenue & Forest Department,
Mantralaya, Mumbai – 400 032

2. The Pune Municipal Corporation,
Shivajinagar, Pune 411 005,
through
a) Municipal Commissioner
b) City Engineer

3. The Collector, Pune District,
Pune Collectorate, Pune 411 001

4. Assistant Director of Town Planning,
283 Narayan Peth, Pun 411 030

5. M/s. Laukik Real Estates Pvt. Ltd.,
14, Koreaon Park, Pune 411 001,
through Mr. Suresh Talera,
13, Wilson Garden, Motilal Talera Marg,
Opp. Pune Railway Station,
Pune 411 001

...Respondents

Mr. Navroz Seervai, Sr. Advocate with Mr. Vivek Menon with Ms. Viloma Shah, Mr. Ameya D. and Mr. Dhiren Durante i/b Hariani & Co. for the Petitioners

Mr. V. S. Gokhale, A.G.P for the Respondent Nos. 1, 3 and 4

Mr. Abhijit Purushottam Kulkarni for the Respondent No. 2

Mr. Rafiq Dada, Sr. Advocate I/b Mr. M. S. Karnik for the Respondent No.5

**CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.**

THURSDAY, 9th JULY, 2015

ORAL JUDGMENT (Per A. S. Oka, J.) :

1. Heard learned Counsel for the petitioners, the learned A.G.P for the first, third and fourth respondents, the learned Counsel appearing for the second respondent and the learned Senior Counsel appearing for the fifth respondent.

2. In this petition under Article 226 of the Constitution of India, the issue concerns the development of plot No. 14 of Koregaon Park at Pune. The allegation in this petition is that the fifth respondent has committed a breach of Building Rules framed by the Collector of Pune for Koregaon Park (for short 'the said Rules'), which have been held to be having force of law. The allegation is that the permissions granted by various Authorities are contrary to the said Rules.

3. With a view to appreciate the submissions canvassed by the Counsel for the parties across the bar, a brief reference to facts is necessary, which are as follows:

It is pointed out that the Collector of District Pune in the year 1921 formulated a plan, which demarcated 122 plots at Koregaon Park. Leases were granted in respect of the said plots. It is stated that the leases were granted in perpetuity. It is pointed out that on 15th February, 1950, Koregaon Park was included within the limits of the Pune Municipal Corporation. Reliance has been placed on the decision of the Division Bench of this Court in the case of the ***Bombay Environmental Action***

Group and Ors. Vs. State of Maharashtra & Ors.¹. It is pointed out that it is held in the said decision that the said Rules are mandatory and strict application of the said Rules to the development of plots in the Koregaon Park area is called for. Apart from the said Rules, the petitioners are relying upon the terms and conditions incorporated in the Lease.

4. The specific challenge in this petition is to the Commencement Certificate issued by the second respondent - Pune Municipal Corporation on 14th August, 2000. It is pointed out that there was an existing structure on the said Plot No. 14. The details of the plan approved by the Corporation are set out in paragraph 18. Paragraph 18 reads thus:

“18. The sanctioned plans inter alia show :

- a) The plot admeasures 5,011.00 sq. m.*
- b) The area of the existing main building of ground floor only and two outhouses is 717.53 sq. m.*
- c) The area of the second main building of ground floor only is 300.78 sq. m.*
- d) The second main building is behind the existing main building.*

¹ 2002 (Supp.) Bom.C.R. 411

e) The only connection between the two main buildings is by two passages on either side of a square open to sky courtyard.

f) The second main independent building has an independent main entrance and inter alia comprises of a drive-in entrance porch, a dining room, a linen store, a shoe room, a powder room, a pooja laundry with a wash area, a water body and two passages / corridors on either side of a square open to sky courtyard connecting to the existing main building.

g) The independent entrance of the second main building is at the rear of the plot.”

It is contended that what is permitted is the construction of an independent second main building, which is joined to the existing main building only by a covered passage.

5. The petitioners are relying upon the Minutes of the Meeting held on 2nd May, 2006, which according to the petitioners, takes a note of the violation of the said Rules.

6. The main substantive prayer in this petition is for quashing and setting aside the Commencement Certificate, No Objection Certificate and all other permissions and sanctions granted by various Authorities.

7. There is a reply filed by Shri Prabhakar Krishnaji Deshmukh, the then Collector of Pune. We must note here that to the said reply, Minutes of the Meeting held on 9th December, 2005 have been annexed. We must also note that the correct reply of the Collector has been erroneously filed in companion Writ Petition No. 222 of 2008 and the reply which ought to have been filed in the said petition has been filed in this petition. There is an affidavit filed by Ms. Sadhana Pradeep Naik, Deputy Director of Town Planning, Pune Division, Pune. There is an affidavit filed by Shri Prashant Madhukar Waghmare working as the City Engineer at the relevant time with the Pune Municipal Corporation, to which No Objection Certificate dated 2nd May 2000, has been annexed. The fifth respondent filed reply of Abhay Ramesh Chordia. There is an affidavit in rejoinder filed by Shri Samir Mehta on behalf of the petitioners, dealing with reply filed by the State Government, the Municipal Corporation as well as the respondent No. 5.

8. The learned Counsel appearing for the petitioners invited our attention to the said Rules and in particular, Rules 3, 4 and 16. He also

invited our attention to the sanctioned plan annexed at Exhibit `D' to the petition. By inviting our attention to the sanctioned plan, he submitted that what was sought to be permitted is a full fledged separate building, which is shown to have been attached to the existing structure only by a passage. He urged that only one main building together with outhouses is permissible in view of Rule 3. He also invited our attention to Rule 4 of the said Rules. He submitted that what is constructed by the fifth respondent is, by no stretch of imagination, an outhouse. He submitted that looking to the sanctioned plan itself, it becomes apparent that what is constructed is an independent main building in addition to existing main building. He also relied upon Rule 31 of the said Rules. Inviting our attention to the Minutes of the Meeting appended to the affidavit in reply of the District Collector and the decisions taken therein, he submitted that the same provides for grant of preliminary no objection and final no objection. He submitted that final no objection has not been granted in respect of the building in question. He invited our attention to the affidavit of Shri Prashant Madhukar Waghmare filed on behalf of the Municipal Corporation. He urged that even going by the stand taken by the respondent No. 5 and affidavits filed by the other respondents, it is obvious

that what was permitted to be constructed was a separate main building, which is joined to the existing main building only by a covered passage, which is completely contrary to Rule 3 of the said Rules. He pointed out the averments made in the affidavit in rejoinder filed on behalf of the petitioners. He also invited our attention to what is held by Division Bench of this Court in the case of the ***Bombay Environmental Action Group (supra)*** in various paragraphs including paragraph Nos. 84, 85 and 87. He, therefore, submitted that all the permissions issued by various Authorities are completely illegal and contrary to the law.

9. The learned Senior Counsel representing the respondent No. 5 invited our attention to the affidavit filed by one Shri Abhay Ramesh Chordia on behalf of the said respondent. He pointed out that No Objection Certificate was granted by the Collector on 2nd May, 2000. Inviting our attention to the reply, he contended that what is sanctioned by the Pune Municipal Corporation was a construction meant for occupation of one family only. He also invited our attention to specific averments made in paragraph 12 of the reply, in which, it was contended that it is not correct that two bungalows have been constructed. It is pointed out that old

bungalow consists of four bedrooms and the extended building consists of a kitchen, a dining room and other essential facilities required for living. He pointed out that various entrances are provided for lawn, servant's area, kitchen and washing area. He urged that the construction of building was completed long back and the present petition has been belatedly filed by the petitioners.

10. Learned A.G.P and learned Counsel representing Municipal Corporation have relied upon various affidavits on record.

11. The learned Counsel appearing for the petitioners, with the permission of the Court, after submissions were concluded, has relied upon certain decisions of the Apex Court. The said decisions are- **(i) *Sri K. Ramadas Shenoy vs. The Chief Officers, Town Municipal Council, Udipi & Ors.***² **(ii) *Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.***³, **(iii) *M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu & Ors.***⁴ **and (iv) *Meherbai Karl Khandalawala & Ors. vs. The Competent***

2 (1974) 2 SCC 506

3 (2013) 5 SCC 336

4 (1999) 6 SCC 464

Authority under Urban Land Ceiling and Regulation Act, 1976 & Ors.⁵.

The said decisions are relied upon in support of the submission that what is constructed in contravention of the said Rules cannot be supported by the Court.

12. We have given careful consideration to the submissions. We have perused the documents annexed to the petition and the averments made in the petition and the affidavits on record. It will be necessary to advert to the relevant Rules out of the said Rules. Rules 3, 4, 16 and 31 are material for our consideration. The said Rules read thus :

"3. Only one main building together with such outhouses as are reasonably required for the bona fide use and enjoyment by its occupants and their domestic servants shall be permitted to be erected in any building plot.

Provided that this restriction shall not prevent the erection of two or more building on the same plot, if the plot admeasures at least twice or thrice as the case may be (according to the number of buildings) the minimum size required.

Provided also that the same open space shall be required around each main buildings as if each of these were in a separate building plot."

"4. Every building to be built shall face the road and where the plot has frontage on more than one road the building shall face the more important road."

5 1988 Mh. L. J. 543

“16. All subsidiary buildings such as an outhouse providing auxiliary accommodation such as a garage, servant's quarter, stable, store rooms, privy, etc. appurtenant to the main building but detached therefrom shall be ground floor structures only and shall be constructed at the rear of the plot at a distance of not less than 10 feet from one another or from the main building or from the boundary of the plot.”

“31. No addition to or alternations in a building shall be carried out without the previous written permission of the Collector.”

As far as Rule 3 is concerned, it is not in dispute that the proviso will not apply. Thus, what is permissible is to have only one main building on a plot together with such outhouses as are reasonably required for the bonafide use and enjoyment by its occupants and their domestic servants. Rule 4 provides that each building to be built, shall face the road and where the plot has frontage on more than one road, the building shall face the more important road. This Rule is pressed into service in the light of the contention that there is an independent entrance provided to the second building permitted under the Commencement Certificate dated 14th August, 2000. It is contended that the second building has an independent entrance on the rear side of the plot.

What is permitted in first part of Rule 3 is one main building with outhouses. Rule 16 indicates what is the concept of outhouse for the purposes of the said Rules. Rule 31 provides that no additions or alterations in a building shall be carried out without the previous written permission of the Collector.

13. Thus, the main issue is whether there is a violation of Rule 3. We have already reproduced averments made in paragraph 18 of the petition. In this context, it will be necessary to peruse the affidavit filed on behalf of the respondent No.5. The said affidavit relies upon No Objection Certificate granted on 2nd May, 2005 by the Collector. A copy of the No Objection Certificate has been annexed thereto. As regards the nature of additional construction sanctioned by the Municipal Corporation, in paragraph 2, he has stated thus:

“2. I further say and submit that accordingly plans were sanctioned by the Pune Municipal Corporation and the structure was constructed which is meant for the occupation of one family only inasmuch as the said bungalow including the additional structure consists only of 1 Kitchen, 1 Drawing Room, 1 Pooja Room, 1 Dining Room and 4 Bed Rooms. There is only 1 Powder Room and no additional shower area in the new construction. Therefore, the said bungalow including the additional structure is only one dwelling unit. The Petitioner's

presumption, therefore, that the said plot No. 14 comprises of 2 bungalows is without any basis and not at all supported by the relevant records. I further say and submit that the previous structure in existence was a very old bungalow and it was more of a weekend house of a Parsee family where there was no proper Kitchen, Pooja Room and Store. The Kitchen was in the outhouse and, therefore, the requirement of additional construction was necessary to have a proper kitchen, a store & a pooja room which is a must.”
(Underlines supplied)

In paragraph 3, he has stated that entrances as provided to the additional construction are entrances to the lawn, servant's area and kitchen washing area. What is stated in paragraph 3 appears to be consistent with the plan sanctioned by the Municipal Corporation, which is annexed to the petition. What is material is paragraph 12 of the reply, which specifically deals with the grounds of challenge in the petition in a tabular format. The tabular format reads thus :

Sr	Grounds of the Petitioners	Explanation
1	Collector NOC is not obtained by the Respondent No. 5	The Collector has issued NOC to construct the building on 02.05.2000.
2	There are two Bungalows for dwelling of two families or intend to sale the other bungalow	There are no two bungalows. It meant for only one family because there is only 1 Kitchen, 1 Dinning Room, 1 Powder Room, 1 Drawing Room, 1 Pooja Room, 1 Family Room, 1 Laundry with a wash area & 4 Bed rooms. There is no additional shower area in the new construction and since it is only one dwelling unit.

3	The Main Bungalow is connected to another Bungalow	There are no two bungalows as alleged, since the old bungalow consists of 4 bed rooms and the extension consists of Kitchen, dining room and other essential users required for living.
4	There are many exists points to the Bungalow and therefore the new bungalow can be sold to other party	The various entrances are provided for a) Entrance to Lawn b) Servant Entrance c) Kitchen Washing Area

Thus, the respondent No. 5 has emphasized on the fact that the original bungalow and the additional structure is meant only for one family, as both the structures taken together provide for only one kitchen, one dining room, one Pooja room, one family room and four bedrooms. It is pointed out that there is no additional shower area in the new construction, as the original construction and the new construction constitute only one dwelling unit. As stated earlier, in paragraphs 2, it is stated that the previous structure in existence was a very old structure and was more of a weekend house, where there was no proper kitchen, pooja room and store.

14. There is a rejoinder filed by one Shri Samir Mehta on behalf of first petitioner to the said affidavit. While dealing with paragraphs 2 and 3 of the affidavit of the fifth respondent, he has merely denied that second building constructed on the said plot is meant for the occupation of only

one family. As far as specific contentions raised in paragraph 12 are concerned, the same are not even dealt with in the rejoinder.

15. Thus, the factual assertions made in the reply filed by Shri Abhay Ramesh Chordia on behalf of the respondent No. 5 in paragraph 12 will have to be accepted as correct. If the said factual aspects are accepted, it follows that the additional construction carried out which is connected with the original structure becomes a part of the original bungalow as it seeks to provide the amenities which were not there in the original bungalow. Moreover, the case made out is that it is meant for the use of one family. This contention is also not denied.

16. Coming back to Rule 3, the intention is to have only one main building. After having perused the copy of the sanctioned plan annexed to the petition and after perusing the affidavit of the fifth respondent, we find that what is constructed on the basis of the permission granted by the Pune Municipal Corporation amounts to an addition to existing main building. The said addition is made by providing the amenities which were not in existence in the main building. The object of constructing the additional

building appears to be to provide amenities which are not provided in the main building.

17. Apart from the physical location, even the nature of user is also material to come to a conclusion as to whether a separate main building is constructed or what is constructed is not a main building but mere addition to the existing building. As stated by the fifth respondent, a weekend house which did not have a proper kitchen was converted in to a full fledged house for residence of only one family. Therefore, what is constructed under the permission granted by the Pune Municipal Corporation cannot be said to be an independent building/house or a main building/house. Therefore, there is no breach of the said Rules.

18. As regards the contention for grant of No Objection Certificate at two stages, the learned Counsel appearing for the petitioners has relied upon the Minutes of the Meeting held on 9th December, 2005.

19. As pointed out earlier, the NOC was granted in the year 2000 and the building permission was granted by the Municipal Corporation on 14th August, 2000. Present petition has been filed on 12th December, 2007.

20. The decisions relied upon by the learned Counsel appearing for the petitioners are as regard the approach of the Court in dealing with the illegal constructions. In the facts of the present case, we have found that there is nothing illegal in the construction carried out by the petitioners.

21. In the circumstances, there is no merit in the petition. The same is rejected. Rule is discharged with no order as to costs.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)