

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10187 OF 2013**

Riddhi Siddhi Commercial Premises

Co-operative Society Ltd.

... Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Ors.

... Respondents

Mr. Pradeep J. Thorat, for the Petitioner.

Mr. J.E. Reis, Senior Advocate a/w Mr. Vinod Mahadik, for the Respondent Nos.1 and 2.

Mr. V.S. Gokhale, AGP, for Respondent No.3.

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

DATE : 21st JULY, 2015

PC.

. Heard the learned counsel appearing for the Petitioner and the learned Senior Counsel appearing for the first and second Respondents. The challenge in this Petition in substance is to the order dated 29th November, 2004 passed by the first Respondent – Municipal Corporation by which a proposal submitted by the Petitioner for modification of the sanctioned lay-out of land bearing Survey No.504 (part) CTS No.1406/6 of village Malad, Mumbai has been rejected. The proposal was as regards 5% amenity open space in the approved lay-out. The impugned order contains an observation that third party

interests have been created in the plots in lay-out and in fact that is the main reason why application of the Petitioner has been rejected. There is a reply filed by the Municipal Corporation. In the reply, it is contended that the lay-out consists of 14 number of plots/sub-plots in which the plot in question is shown as amenity space plot. The contention raised appears to be that the amenity space is available for the benefit of all the plot holders and what the Petitioner has acquired is the plot earmarked for amenity space. The contention is that the said plot is meant for the benefit of all the plot holders. Therefore, a stand is taken that without the consent of all the plot holders, the proposal of the Petitioner cannot be approved.

2. The stand taken by the Municipal Corporation appears to be correct. The issue can be resolved by directing the Municipal Corporation to reconsider the application of the Petitioner after notice to all the plot holders of the plots in the lay-out and after giving an opportunity of being heard to the said plot holders. The learned counsel appearing for the Petitioner states that the Petitioner will supply names and addresses of all the plot holders to the first Respondent- Municipal Corporation within a period of two weeks from today.

3. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned communication dated 29th November, 2014 (Exhibit-A I) is hereby set aside;
- (ii) We direct the first Respondent to reconsider the proposal submitted by the Petitioner for modification of the sanctioned lay-out after issuing notice to all the plot holders of the plots in the lay-out and after giving an opportunity of being heard to all of them;
- (iii) On Petitioner supplying the names and addresses of the plot holders, the concerned officer of the Municipal Corporation will issue notice to the plot holders and give them an opportunity of being heard;
- (iv) Final order on the proposal made by the Petitioner shall be passed within a period of three months from the date on which names and addresses of the plot holders are supplied by the Petitioner to the Municipal Corporation;

- (v) In the event, an application for modification of the lay-out is rejected, the Petitioner will be entitled to challenge the said order as well as the order passed by the State Government in Appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966;
- (vi) The order passed on the application for modification of the lay-out shall be communicated to the Petitioner. Till the date of communication of the order, ad-interim relief granted in this Petition shall continue to operate. If the order be adverse to the Petitioner, ad-interim relief shall continue to operate for a period of one month from the date on which the communication of the order is served on the Petitioner;
- (vii) The Petition is disposed of on above terms;
- (viii) All concerned to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)