

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

WRIT PETITION NO. 10806 OF 2014

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| 1. | Sector 1, Shanti Nagar Welfare Association |] |
| | situated & having its Registered office at Harsh Vihar, Building No.19/704, |] |
| 2. | Sunidhi Shantinagar CHS. Ltd. |] |
| | situated & having its Registered office at Building Nos.B/16 & B/17, |] |
| 3. | Harsh Vihar Bldg. Nos.18 & 19 CHS Ltd. |] |
| | situated & having its Registered office at Harsh Vihar, Building Nos.18 & 19, |] |
| 4. | Kshitij Shanti Nagar CHS Ltd. |] |
| | situated & having its Registered office at Building No.B/20-21, |] |
| 5. | Harsh Vihar Bldg. Nos. 29, 29 & 30 CHS Ltd. |] |
| | situated & having its Registered office at Harsh Vihar, Building Nos.28 to 30, |] |
| 6. | Harsh-Vihar Bldg. Nos.33 & 34 CHS Ltd. |] |
| | situated & having its Registered office at Harsh Vihar, Building Nos.33 & 34, |] |

7. Kinjal Bldg. Nos. 35-36]
 CHS Ltd.]
 situated & having its Registered]
 office at Building Nos.35-36,]
8. Harsh Vihar Bldg.]
 No. 41-A CHS Ltd.]
 situated & having its Registered]
 office at Harsh Vihar,]
 Building No.41-A,]
- All the Petitioners are situated and]
 are having their respective registered]
 Offices at Sector 1, Shanti Nagar,]
 Mira Road (East), Thane – 401 107.] .. Petitioners

Versus

1. Mira Bhayandar Municipal]
 Corporation,]
]
2. The Commissioner,]
 Mira Bhayandar Municipal]
 Corporation,]
 The Respondent Nos.1 and 2 having]
 its office at Swargiya Indira]
 Gandhi Bhavan, Chhatrapati]
 Shivaji Maharaj Marg,]
 Bhayandar (West), Thane-401 101,]
]
3. M/s. Shantistar Builders,]
 Having its office at 302, Sharda]
 Chambers, 15, New Marine Lines,]
 Mumbai- 400 020]
 And at Sector 9, Shanti Nagar,]
 Mira Road (East), Thane – 401 107.].. Respondents

Mr.Mohit P. Jadhav for petitioners.

Mr.N.R.Bubna for respondent nos.1 and 2.

Mr.P.K.Dhakephalkar, senior advocate a/w. Mr.Aditya Shiralkar & Mr.Rahul R. Kadam i/b M/s. Shiralkar & Co. for respondent no.3.

**CORAM : ANOOP V. MOHTA,
K.R.SHRIRAM, JJ.
DATE : 19TH MARCH, 2015**

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.) :

- 1 Rule made returnable forthwith. By consent, heard finally.
- 2 The petitioners herein are the residents of area called Shantinagar and through their Welfare Association have filed the present petition challenging the commencement certificate dated 13th December 2013 issued by respondent nos.1 and 2 (Mira Bhyandar Municipal Corporation) in favour of respondent no.3 (Owner and Developer) of open plot bearing Survey No.734 to 748 of village Bhayandar and Survey No.194 to 214, 252 & 254 of village Mira, details of which is mentioned in affidavit in reply, dated 9th February 2015 filed by respondent no.1-Corporation.
- 3 There is also no issue that the lay out plans have been revised earlier on 28th November 1997 and thereafter on 27th January 2006. The commencement certificate in question is based upon the sanctioned/revised plan dated 13th December 2013. There is no challenge whatsoever to the

sanctioned lay out plan including the Area Statement. Based upon the development regulations the requisite area of 15% recreational ground (R.G.) of the plot is about 70708.57 sq.mtrs. Other deductions are also not in dispute so also the area of plot for the construction of building for which the commencement certificate has been granted by respondent nos.1 and 2.

4 Affidavit in reply dated 9th February 2015 filed by respondent no.1-Corporation deals with the contention so raised by the petitioners in every aspect with further material to justify their action of granting commencement certificate. The petitioners are unable to point out any defect and/or illegality regarding the Area Statement on the revised/sanctioned plan, except making bare statements/contentions that respondent nos.1 and 2 in collusion with respondent no.3 encroached upon the R.G. area as averred in the petition.

5 The respondent no.1-Corporation in their affidavit has averred as under :

4 I say that the first layout was sanctioned by the then Grampanchayat in the year 1978 with the prior approval of the Assistant Director of Town Planning of Thane and N.A. order of the Collector of Thane. In the said order, vide Condition No.6, it was mandate to keep 15% open space in the sanctioned layout. Similarly, at the time of sanctioning the layout in the year 1978 to 1988, in

any layout an area above 4000.00 sq.mtr. 10% for R.G. 5% for Amenity Open space, i.e., total 15% R.G. was made provision in Regulation No.11.3.1 and 11.7 of Mumbai Mahanagar Regional Development Authority Control Regulations. I say that the Respondent No.3 after deducting the area of road and reservation had shown Net Plot Area of "A1" as 471390.49 sq.mtrs. in the plan and as per this plot area 15% of R.G. area 70708.57 sq.mtrs. was required however the respondent no.3 had proposed R.G. area 988443.89 sq.mtrs. in the layout plan which is more than 15% of required R.G.

5 I say that the buildings and certain recreational grounds sanctioned in the aforesaid layout are already developed by the Developer and they are existence since the sanction of plan. However, the Developer as well as the concerned Residential Complexes are not able to develop and maintain the certain recreational spaces sanctioned in the layout and keep free from any encroachment. In view of these circumstances, the Town Planning Department of the State Government had issued a circular dated 30/06/2010 directing all Corporation of Maharashtra to take over the recreational grounds which are sanctioned in the layout by the local authority and to maintain the same as per the sanctioned plan. In view of the aforesaid directions of the State Government, the Respondent Corporation after completing all formalities entered into an Agreement with M/s. Shantisar Buildings, the Respondent No.3 through their authorised representative Ashit Ramesh Shah on 25/03/2014 to record the handing over of the Recreation Grounds in the aforesaid layout for the purpose of development and maintenance only entirely at the costs of the Corporation. The said Agreement is duly registered with the Sub-Registrar of Thane having Document No.2460/2014. Hereto annexed and marked as Exhibit "A" is the copy of the plan showing the details of all the R.G. Plots which are more particularly described in the Schedule and shown in the plans annexed to the said Agreement. The said R.G. are shown sector wise. So also per the aforesaid Agreement it could be seen that total R.G. plot area measuring 98348.96 sq.mtrs. is handed over to the

Corporation for development and maintenance and now the Respondent Corporation is in possession of the R.G. plot.

6 I say that the permissible Built up area along with Development Riths is 716853.59 sq.mtrs. and proposed area is 716730.85 sq.mtrs. out of which existing area was 710813.39 sq.mtrs. In the revised layout, proposed area is 6040.20 sq.mtrs. out of which 2461.33 sq.mtrs. built up area was approved vide approval 26/12/2012 and area of 3456.13 sq.mtrs. is approved in the revised layout dated 13/12/2013.

6 The counsels referred their respective averments and the maps so annexed to the petition. We have gone through the same also. The affidavit in reply and the averments so recorded above are sufficient to dismiss the present petition. We have also noted that the RG area as per the revised/sanctioned has been made available. The petitioners' main grievance has been redressed.

7 The learned counsel appearing for the Corporation made statement that they had received possession of the RG area on 25th March 2014 as per the development plan and scheme. The petitioners' contentions, therefore regarding the RG plot has been duly taken care of and so also the interest/objection of the petitioners and the neighbours around the area.

8 We are also satisfied that there is no illegality. We are unable to accept the contention raised by the petitioners that before granting the commencement certificate, they should have been heard. The counsel relied upon the a judgment in the matter of ***Sirur Municipal Council Vs. State of Maharashtra***¹ and contended that hearing should have been given. The facts and circumstances in the case are totally different and distinguishable. This judgment is based upon Sections 27 and 33 of the Maharashtra Regional Town Planning Act, 1966. We are not concerned with the similar circumstances in the present matter. On the contrary, there is an ample material on record to show that the respondent-Corporation themselves insisted that the RG area should be made available and ultimately they have signed the plan and issued the commencement certificate after the RG area made available by respondent no.3. The petitioners' complaint that the earlier RG area is changed and shifted is untenable. The petitioners cannot insist for personal hearing before granting such commencement certificate. There is no provision pointed out which needs to be followed before granting the commencement certificate. The objections are filed by the petitioners. The respondent-Corporation has taken care of their objections that resulted into the availability of the RG area for the locality. In these circumstances, the question of giving personal hearing to the petitioners, as

1 1997 (1) MAH.L.J. 610

contended, does not arise. The petitioners, as recorded above, have not challenged the basic sanctioned/revised plan of 13th December 2013 but challenged only the commencement certificate.

9 Therefore, taking overall view of the matter, no case is made out by the petitioners. Hence the writ petition stands dismissed. No cost.

(K.R. SHRIRAM, J.)

(ANOOP V MOHTA, J.)