

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2543 OF 2001

Charkop Aakanksha Co-operative Housing
Society Ltd. and Others

.. Petitioners

Vs

Mumbai Municipal Corporation for
Greater Mumbai

.. Respondent

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Shri Anil Yadav i/by Shri Dhanesh R. Shah for the Petitioners.

Mrs. Shobha Ajitkumar for the BMC.

Shri Manish B. Makhija and Shri Madhusudan V. Annaldashla, Members
of the Petitioner No.1 present.

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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 31ST JULY 2015

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

. This Petition was on the final hearing cause list which was heard for some time on 24th July 2015. The first four Petitioners are the Co-operative Housing Societies having the buildings at Charkop, Kandivali (West), Mumbai. The other four Petitioners are the Secretaries of the first four Petitioners. The buildings of the first four Petitioners-Societies are abutting 90 feet Development Plan Road. It is alleged that 5 to 7 days prior to the filing of the Petition, the Respondent Municipal Corporation started construction of a fish and meat market in front of the buildings on the Development Plan Road. Therefore, the present

Petition has been filed seeking a writ of mandamus against the Respondent Corporation restraining it from constructing a fish and meat market on the Development Plan Road. The Rule was issued by this Court on 7th December 2001 by passing the following order.

“1. Prima facie we are of the opinion that putting up of a fish market on the D.P road is not permitted under the Act. Hence, Rule. Interim relief to continue.

2. However, this will not preclude the Corporation from taking steps to delete the portion of the proposed market from the D.P Road and in that event respondent Corporation will be at liberty to apply for vacation of stay.”

2. The interim relief was granted on 10th May 2001 by the learned Vacation Judge directing the Respondent not to shift the fish and meat market to the new premises. The said ad-interim relief was continued under the interim order.

3. There is a reply filed by Shri S.J.Bendre, Sub-Engineer, R/South Ward Office, Kandivali (West) of the Municipal Corporation. In the reply, it is pointed out that the local people from a nearby village were selling fish and meat at South-East Corner of Ambedkar Junction above the Nalla. It is stated that the said area was surrounded by the multi-storeyed buildings and as the residents were facing the problem of vehicular traffic, it was proposed to rehabilitate the fisher women

who are total 30 in number at the new site. The location map of the new site is annexed to the reply. It is contended that the fisherwomen were shifted to the place known as “Borsapada Road”, which is a 90 feet wide road connecting the S.V.Road and Marve Gorai Link Road. It is contended that the newly allotted place is a dead end.

4. While admitting the Petition, this Court has observed that putting up a fish and meat market on the Development Plan Road is not permitted.

5. Today, the learned counsel appearing for the Petitioners on instructions of the Petitioners who are present in the Court states that now none of the persons selling the fish or meat are sitting by the side of or on 90 feet wide Development Plan Road which is the subject matter of this Petition. However, he apprehends that in future, after disposal of the Petition, they may again start sitting.

6. The learned counsel appearing for the Respondent Corporation states that though the concerned officers have visited the site, she has not received the report. On 24th July 2015, the time was granted to the learned counsel appearing for the Respondent Corporation to take instructions. This Petition which is pending from the year 2001 cannot be kept pending any more.

7. Hence, we dispose of the Petition by restraining the Respondent Municipal Corporation from allotting the site shown delineated in red colour in the Plan at Exhibit-A to the Petition to a fish/mutton market without modification of the Development Plan. The 90 feet wide Development Plan Road shall not be used for setting up a market without modification of the Development Plan. The Rule is accordingly made absolute with no order as to costs.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)