

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1372 OF 2014

Slum Redevelopers Association	}	
and Anr.	}	Petitioners
versus		
The Slum Rehabilitation Authority	}	
and Anr.	}	Respondents

Mr. Milind Sathe-Senior Advocate with
Mr. Prakash Shinde and Ms. Chinmayee Ghag
i/b. M/s. MDP and Partners for the
Petitioners.

Mr. J. G. Aradwad (Reddy) for Respondent
No. 1.

Ms. H. Y. Shah-AGP for Respondent No. 2.

Ms. Vandana Mahadik i/b. Mr. Jernold Joseph
Xavier for Respondent No. 3.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- AUGUST 14, 2015

P.C. :-

This Writ Petition under Article 226 of the Constitution of India seeks issuance of a Writ of Certiorari or other appropriate Writ or direction in the nature thereof calling for records and proceedings regarding two circulars dated 12th January, 2012 and 30th January, 2012 and after scrutinising the legality and propriety thereof, this Court should quash and set aside the same.

2) By an amendment made to this Writ Petition, the Municipal Corporation of Greater Mumbai has been impleaded as a party Respondent.

3) Since the Slum Rehabilitation Authority (SRA)/first Respondent is the authority constituted under the provisions of section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the Petitioner No. 1 is a Association of Developers, who develop the slum projects under the Slum Rehabilitation Scheme and implemented by Respondent No. 1, the SRA informed them that they would be applying the regulations, namely, the Development Control Regulations for Greater Mumbai, 1991 and the circulars of the Municipal Corporation of Greater Mumbai. The argument relates to availment of Floor Space Index (FSI), known as Fungible FSI and what has been urged is that the term FSI is defined. The area covered by balconies, flower beds, individual terraces, ducts, voids, niches, refuge area etc. were not included while computing the FSI. These were areas free of FSI. Now, the third Respondent, by a Notification dated 6th January, 2012, added the new regulation being D.C. Regulation 35(4), under which, the area of Balconies, flower beds, individual terraces, ducts, voids, niches, refuge areas etc. hitherto free of FSI would be counted in the FSI. A copy of this Notification is

annexed as Annexure 'A' to the Writ Petition. In view of this Notification and in order to compensate for the loss of “free of FSI” areas, the Builders/Developers now have to avail of Fungible compensatory FSI, which may be used like regular FSI. However, that will come at a premium and the calculation of which has been set out in the Notification itself. However, the two circulars, which are impugned in the Writ Petition and issued by the Municipal Corporation of Greater Mumbai make certain provisions, which, in the opinion of the Petitioners were conflicting with the substantive Notification issued by the State. It is these circulars which were causing difficulty and that is how the few projects of Petitioner No. 2 are stated to have been affected.

4) The premium demanded has been paid under protest on the footing that the circular is in conflict and as noted above. It is in these circumstances and on the grounds mentioned in the Writ Petition, both, the Association as well as the Petitioner No. 2 have challenged these Circulars.

5) A Notice of Motion has also been filed and seeking to place on record certain subsequent developments and claiming reliefs in terms of the prayers of the Notice of Motion.

6) When both these applications were placed before us today and our attention was invited to an affidavit filed by the Municipal Corporation on 4th June, 2015, Mr. Sathe-learned Senior Counsel appearing for the Petitioner urged that on account of a subsequent development and, namely the Government's communication dated 15th July, 2015 addressed to the Commissioner of Municipal Corporation of Greater Mumbai, a substantial part of the grievance of the Petitioner has been redressed.

7) Now, the Government has issued a Resolution and which is published in the official Gazette, which notifies that the Government has sanctioned a proposed Notification with some changes and as described more specifically in the Schedule appended to this Notification. Our attention is invited to the Schedule by Mr. Sathe and the same reads as under:-

“SCHEDULE

(Accompaniment to Notification No. TPB 4313/962/CR-44/2014/UD-11

Dated 21st May, 2015

The Explanatory Note (i) to Regulation 35(4) of the Development Control Regulation for Greater Mumbai, 1991, is replace as follows:-

“(i) If an IOD/IOA has already been granted in respect of a building, which is under construction and not complete on the date of coming into force of this regulation, then at the option of the owner/developer, the regulation prevailing prior to 6th January, 2012 shall be applicable to subsequent amendments to the IOD/IOA and to sanctioned plans, to the extent such amendments

provide for additional development in relation to such building, subject to charging premium at the maximum rate charged for approval to lift, Lobby, Staircase by the Municipal Corporation of Greater Mumbai.””

8) Mr. Sathe submits that in the light of this explanatory note (i) and which has replaced in the above terms the Regulation 35(4) together would enable the Petitioners and particularly Petitioner No. 2 to exercise an option and that would mean it can continue with the projects in hand by applying the Development Regulations as they were in force and prior to 6th January, 2012. Petitioner No. 2 now proposes to exercise that option and would like to approach the SRA and with a request/representation in writing. Further, the SRA having been designated as Planning Authority for the purpose of implementation of the Slum Rehabilitation Schemes, the Petitioner No. 2 and similarly situated developers will make an application requesting the SRA to permit them to carry on the projects in terms of the option exercised and also seek refund of the amount of premium which has been deposited with the SRA.

9) While we accept Mr. Sathe’s statement that the Petitioners have no subsisting grievance particularly in terms of prayer clauses (a) and (b) of the Writ Petition insofar as the option and which is sought to be exercised and the claim for refund is concerned, we direct that in the event any representation is made and in writing by the Petitioners, the

SRA shall decide the same and pass appropriate orders thereon within a period of two months from the date of receipt of such representation. The decision shall also be communicated to the Petitioners and such others who have made the representation/request in writing.

10) We clarify that it is only in the light of the submissions canvassed by Mr. Sathe and based on which the stand of the Petitioners has been placed before us that we have not examined the rival contentions particularly with regard to the legality and validity of the Circular. All contentions in relation to the same are kept open and to be canvassed at an appropriate stage in appropriate proceedings. Similar order and direction would govern the applicant in Notice of Motion (L) No. 195 of 2015 and it will be entitled to the same liberty and to make a representation to the SRA. Even at the instance of this applicant the larger challenge and issue has not been pressed by Mr. Sathe. The Writ Petition is disposed of accordingly.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)