

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.1885 OF 2014

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1. Runwal Homes Pvt.Ltd.
a company registered under the provisions
of the Companies Act, 1956

2. Mr.Subodh Runwal,
having his office at
Runwal & Omkar Esquare,
5th floor, Opp.Sion Chunnabhatti Signal,
Sion (E), Mumbai- 400 022

...Petitioners

v/s.

1. Municipal Corporation of Gr.Mumbai
2. Municipal Commissioner,
Municipal Corporation of Gr.Mumbai
3. Chief Engineer,
Municipal Corporation of Gr.Mumbai
4. Executive Engineer,
Municipal Corporation of Gr.Mumbai
5. State of Maharashtra
through Urban Development Department,
Mantralaya, Mumbai
6. Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
7. Sub Registrar Assurances,
having his office at
Kurla/Chembur, Near Fine Art Gallery,
Administrative Building, Chembur (E),
Mumbai- 400 071

...Respondents

...

Mr.Milind Sathe, Sr.Advocate with Mr.Parimal K. Shroff, Mr.D.V.Deokar,
Mr.Subodh Joshi, Mr.Sachin Pandey, Mr.Jehaan Mehta & Ms.Priyanka
Rathore i/b M/s.Parimal K. Shroff & Co. for the Petitioners.

Mr.E.P.Bharucha, Sr.Advocate with Ms.Surekha Sonwane for Respondents Nos. 1 to 4.

Mr.D.A.Nalawade, Government Pleader for Respondents Nos. 5 & 6.

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**CORAM : ANOOP V. MOHTA &
A.A.SAYED, JJ.**

RESERVED ON : 13 OCTOBER 2015

PRONOUNCED ON: 29 OCTOBER 2015

JUDGMENT: *(Per Anoop V. Mohta, J.)*

Rule returnable forthwith. Heard finally.

2 The subject matter of the present Petition is a plot of land being new City Survey No.681 A/7 to 681 A/13 ad-measuring 87,470 sq.mts., (the plot) situate at village Nahur, Bhandup (West), Taluka Kurla in “S” Ward of Municipal Corporation. The plot of land is owned by the Petitioners and is affected by Development Plan Reservation in respect of D.P. Roads comprising of 45.70 mt. wide Mulund-Goregaon Link Road and 18.30 mt. wide Bhandup Village Road. The aggregate D.P Road reservation is 8209.30 sq.mts.

3 Respondents Nos.1 to 4 are the authorities under the provisions of the Mumbai Municipal Corporation Act, 1888 (for short “MMC Act”). Respondent No.5 is the State of Maharashtra and Respondents Nos.6 & 7 are functionaries of Respondent No.5.

4. The Petitioners main prayers are as under:

(i) To forthwith sanction the revised Proposal for development of the said plot interalia modifying the computation of Amenity Space by adjusting D.P. Road area of 8,209.30 sq.mts against total Amenity Space area of 18,765.30 sq.mts. as provided in D.C. Regulation 57(4)(c)(ii) and Note in respect of D.P. Road and make all consequential changes and grant all consequential benefits including T.D.R. to the Petitioner No.1.

(ii) To forthwith consider and sanction Petitioners' proposal by modifying computation of Amenity Space by adjusting D.P. Road area of 8209.30 sq. mts. against total Amenity Space area of 18763.30 sq.mtrs. for development of the subject plot under DCR 57(4)(c)(ii) and Note II appended thereto in accordance with the Judgment and order of this Hon'ble Court in Writ Petition No.651 of 2013 dated 13 March 2014.(Wadhwa Residency Pvt. Ltd. v/s. Municipal Corporation of Gr.Mumbai, 2014 (4) Bom.C.R. 845).

(iii) To direct the Respondents to restitute all records in respect of subject land on the basis of aforesaid computations of amenity space by setting off D.P.Road areas against amenity area.

(iv) To revoke and/or cancel the registered Deed of Declaration-Cum-Indemnity Bond dated 30 October 2013 registered with the Sub Registrar of Assurances at Kurla registered under serial No.9391 of 2013 to the extent of 8200 sq.mts. area, copy of which is annexed as Exhibit “E” to the Petition and as shown on the layout plan annexed as Exhibit “N” hereto and Property Register Card in respect of City Survey No.681/A8 (part) to the extent of 8209.30 sq.mts.

5. By Notification dated 14 May 2007 issued under section 37(2) of the Maharashtra Regional & Town Planning Act, 1966 (The M.R.T.P. Act), the Government of Maharashtra sanctioned the amendment to Development Control Regulations for Greater Mumbai, 1991 (D.C. Regulations) and various other Municipal Corporations. By the Notification, in D.C. Regulation 57(4)(c)(i), it is provided that for conversion of industrial zone to residential/ commercial zone, NOC from Labour Commissioner, State of Maharashtra would be necessary.

6. Petitioners' Architects M/s.Aakar Architects & Consultants made an Application dated 20 January 2010 to Mumbai Municipal Corporation (the Corporation) to allow residential user of the plot of land by sanctioning such user from present industrial zone user.

7. On 15 February 2010, the Corporation addressed a letter to the Principal Secretary, Urban Development Department seeking clarification whether the area of 15.24 meters wide Railway Reservation which is proposed to modify the new D.P. Road by Urban Development Department, where 37(1) and 37(1)(a) were already issued by Urban Development Department and also suggestions/objections in this respect have been invited by D.D.T.P., can be adjusted against Amenity open space required as per modified Regulations 57(4) of D.C. Regulations 1991 and Notification dated 14 May 2007 and whether D.P. Road can be treated as reservation and can be adjusted against Amenity open space.

8. The Executive Engineer (D.P.)(E/S) by his letter dated 26 March 2010, informed the Architects of the Petitioners that their request to allow residential/commercial user of the plot was allowed subject to terms and conditions set out therein. On 9 June 2010, MCGM granted benefit of adjustment of DP Road.

9. On 30 August 2012, Petitioner No.1 handed over 8209.30 sq.mts. area under D.P.Road Reservation to Respondent No.1-Municipal Corporation of Gr.Mumbai/Executive Engineer (D.P.) and this fact is recorded by MCGM by issuing a possession receipt. On 4 September 2012, Petitioner No.1 handed over area admeasuring 18,765.30 sq.mts. being 25% + 5% amalgamated Amenity Space in respect of the said plot of land to the Municipal Corporation of Gr.Mumbai. The Petitioners through their Architects vide their letter dated 12 April 2013 called upon the Respondent No.6-State of Maharashtra to instruct Respondent No.1-Municipal Corporation of Gr.Mumbai to consider the request as per the provisions of DCR 57(4)(c)(ii) of D.C.Regulations 1991 and adjust the area of the Road Reservation ad-measuring 8209 sq.mts. towards Amenity Space and accept the balance amenity area ad-measuring 10,556.28 sq.mts. from the said plot. Once again the Petitioners through their Architects M/s.Aakar Architects & Consultants addressed a letter dated 14 June 2013 to Respondent No.6-State referring to the provisions of DCR 57 and elaborating how the D.P.Road Reservation area was “Amenity” and/or “Public Utility and Amenity” and how Petitioners were entitled to be granted benefit of the D.P.Road reservation against Public Amenity. The Petitioners also obtained Property Registered Card in respect of the plot admeasuring 8209.30 sq.mts falling

under D.P.Road reservation in the name of MCGM.

10. By a Deed of Declaration-cum-Idemnity Bond registered with Respondent No.7-Sub Registrar of Assurances at Kurla under serial No.9391 of 2013 dated 30 October 2013, Petitioner No.1 surrendered the amenity plot admeasuring 18,765.30 sq.mts to Respondent No.1-Municipal Corporation of Gr.Mumbai. On 6 June 2014, DRC was issued in favour of the Petitioners for 18,765.309 sq.mts. M/s.Aakar Architects & Consultants of the Petitioners once again by their letter dated 10 June 2014 submitted a revised proposal to the Respondent No.4-Executive Engineer, MCGM for allowing adjustment of the D.P. Road against area admeasuring 8209.30 sq.mts. against Amenity Space of 18,765.30 sq.mts. and referred to the judgment of this Court in case of **Wadhwa Residency Pvt.Ltd. v/s. Municipal Corporation of Gr.Mumbai**¹. There was no response from the Municipal Corporation. Hence this Petition. Above undisputed facts are noted and quoted from the synopsis filed by the Petitioner.

11. Learned Counsel for the Petitioners relied upon the following judgments:

- (i) Wadhwa Residency Pvt.Ltd. & anr. v/s. Municipal Corporation of Gr.Mumbai and ors.

¹ 2014 (4) Bom.C.R. 845

- (ii) Godrej v/s. State of Maharashtra,²
- (iii) MCGM v/s. Yeshwant Vaithi,³

The two judgments in Godrej (supra) & Yeshwant Vaithi (supra) have been noted in Wadhwa Residency (supra)

In Wadhwa's case (supra) it was held as follows:

“26 In the present case, the Counsel have read and referred the pleadings, as well as, the Regulations and the correspondences of the parties. The plain reading of the Regulation shows that "any reservation" means and includes all reservations including railway reservation in question. The land as falls in the industrial zone and partly residential zone. The requisite amenities/reservation including for the BEST Bus Depot, D.P. Roads, railway reservation, welfare centers, schools etc., all fall within the ambit of reservation and amenities. All these reservation/amenities are part of the development and, therefore, bound to be a part of such reservation/amenities, subject to requisite conditions, but there is no question of denial and/or delaying the entitlement/grant as prayed. However, there cannot be any doubt that all these amenities, open space/reservation are subject to the declared policy and other changes, permission/sanction and relocation as required.

29. There is no specific denial also to the following averments in the petition:

“(G)

(H) The Petitioners submit that in case of DP Road Reservation the Petitioners would be entitled to hand over the said road as land as well as construct the road and ask for 1 FSI for the land and 1 FSI for the construction of road in terms of the judgment of the Supreme Court in the cases of (Godrej vs. State of Maharashtra), 2009 (3) Bom. C.R. 187 (S.C.) : 2009 (5) S.C.C. 24 and (MCGM vs. Yeshwant Vaithi), 2011 (11) S.C.C. 88 and therefore the difference between amenities and reservation is of

² 2009(3) Bom.C.R. 187

³ 2011 (11) S.C.C. 88

no significance in the instant case and the Petitioners are entitled for benefit under Note II appended to DC Regulation 57(4) and such benefits must be made available to the Petitioners.” ”

12. The case of the Petitioners is that Petitioner No.1 is eligible for benefit of adjustment of reservation against amenities required in terms of DC Regulation 57(4)(c)(i) & (ii) in view of the permission granted by Respondent No.1-Municipal Corporation vide communication dated 26 March 2010. The submission of the Petitioners is that the Respondents are not justified in discriminating the Petitioners by refusing to grant benefit of adjustment of reservation against the amenities required in terms of D.C. Regulations 57(4)(c)(i) & (ii). Relying upon the judgment of this Court in M/s.Wadhwa Residency Pvt. Ltd. (supra), learned Counsel for the Petitioners submitted that the Respondents are not justified in not following the interpretation to D.C. Regulations 57(4)(c)(i) & (ii), where this Court has held 'any reservation' includes and covers 'any area' and/or 'a plot of land' reserved for public purpose including the area of public amenity space as per the D.C.Regulations 57(4)(c)(i)& (ii). Further it is submitted that Respondents are not justified in refusing to grant to Petitioner No.1 benefit of adjustment and set-off of DP Road Reservation as reservation against public amenities.

13. The Respondent No.1-Corporation by affidavit dated 30 April 2015 and additional Affidavit dated 2 September 2015 resisted the prayers and the relief so sought by the Petitioners.

14. The justification given by the Respondents that the Petitioners have handed over the DP Road as well as Amenity and hence now cannot claim benefit is unsustainable so also the ground of delay so raised.

15. Admittedly, the Petitioners' project is ongoing project. There is no bar or prohibition not to change the plan. The adjustment of FSI and fresh computation is permissible. There is no other legal hurdle or statutory bar. The case if covered by the judgment, the Petitioners are entitled for reliefs as prayed. There is no reason not to grant the same, as the Respondents, inspite of the representations, failed to consider the Petitioners' claim. The Respondents cannot claim equity or benefits of their inaction and/or delayed decision. The Respondents case that they have planned and proceeded to develop the land inspite of pendency of Petitioners' claim/representation, apart from present Petition, is also unacceptable. The Respondents ought not to have proceeded in view of pending claim of the Petitioners, as prayed in this Petition. The stated delay and laches also cannot be the ground to deny the case as prayed. There is also no positive

denial to the fact that the Respondents, based upon Wadhwa Residency Private Ltd. (supra) and in similar factual position, granted such benefits to others. The related averments remained uncontroverted for want of specific denial.

16. The issue with regard to residential/commercial use on the land in question of village Nahur, Special Industrial Zone was pending since January 2010. Respondent No.1 was aware of the request made by the Petitioners through Architect referring to provisions of Regulation 57(4)(c) of the DC Regulations, 1991. Respondent No.1, in fact, sought clarification from Respondent No.6-State Government. The same was pending. The Petitioners' representation/request was continuing one. On 12 April 2013/ 14 June 2013 also the Petitioners requested Respondent No.6 to consider their case with appropriate directions to the Municipal Corporation.

17. On 13 March 2014, this Court in Wadhwa Residency Pvt.Ltd. (supra) clarified the position as quoted above.

18. Respondent No.1 based upon the same judgment allowed adjustment of DP road against amenity space in similar circumstances and similar facts and as stated specifically and not denied by Respondents in the case of Tata Steel Ltd. on 31 May 2014. The Petitioners, therefore, on 10

June 2014 once again through their Architects submitted revised proposal to Respondent No.4 for allowing adjustment of the DP road against the amenity space by referring to the judgment in the case of Wadhwa Residency Pvt.Ltd.

19. There is no denial to the fact that the Respondent-Corporation has taken steps to develop the plot pending the issue/representations/request so made by the Petitioners, which was even prior to surrender of the land and even after surrender of the land in view of the judgment and the benefits granted to other similarly situated persons by the Respondents.

20. After going through the Affidavit so filed by the Respondents, we have noted that in spite of specific representation made on 31 May 2014 by the Petitioners after the Wadhwa Residency judgment, the Respondents, pending the Writ Petition and the representations, have taken steps for multi specialty hospital, which is admittedly now at preliminary stage including appointments of consulting engineers & consultants. This step in no way can be treated as taking effective step in completion of the project of multi specialty hospital. There is no such plan submitted also for such construction. The submission is that in the case of Tata Steel Ltd., though

possession was taken by the Corporation, still the said benefits were granted to them. We, therefore, are inclined to accept the case of the Petitioners that, mere acquisition and/or possession by the Corporation, in view of the above admitted position of pendency of request/representation and the Writ Petition, the benefits cannot be denied to the Petitioners. On the contrary, the Petitioners are entitled to the benefits in view of the settled position, which is not challenged by the Corporation and admittedly the judgment in Wadhwa Residency (supra) has been followed and implemented by the Respondents as noted above. We are inclined to accept the case of the Petitioner that if the Deed of Declaration-Cum-Indemnity Bond dated 30 October 2013 was not executed by them, the Petitioner would not have been able to continue with the development of the ongoing project.

21. However, considering the fact that certain initial steps have already taken by the Respondent-Corporation for preparing proposal for multi specialty hospital and therefore as the public money has been spent by the Corporation for the same, we are inclined to direct the Petitioners to pay the actual amount spent for advertisement, documentation, the consultants' fees and other expenses incurred towards the same within two weeks from the receipt of communication by the Corporation to the Petitioners giving the break up of the actual amount spent.

22. Additional factors which are in favour of the Petitioners include request and representation of the Petitioners since January 2010. The Respondents without clarifying the position and knowing fully about the pendency of the representations and the present Writ Petition, the judgment of this Court in Wadhwa Residency (supra) and further in similarly situated facts and circumstances the Respondents themselves have granted benefits as prayed to other similarly situated persons, therefore, the rejection of the Petitioners' claim on the ground that the Petitioners have already utilized the TDR of the entire amenity space in their project and therefore now there was no question of granting them additional area of 8,209.30 sq.mts. is unacceptable. This action of Respondents is unjust, discriminatory and contrary to the provisions of law so referred above. Therefore, there is no question of claiming any equity merely because the Respondents have now proceeded to utilize the land for proposed project in spite of pendency of the present Writ Petition and the issue raised.

23. Therefore, we are inclined to observe that the Respondents are not justified in discriminating and denying the benefits of adjustment of reservation against the amenity space to the extent of DP road which was pending clarification and the request so made by the Petitioners cannot be a

reason to deny benefits of claim by the Respondents, specifically in view of judgment in the case of Wadhwa Residency (supra). The Petitioners are eligible for benefits of adjustment of reservation in terms of DC Regulations in question in view of permission already granted by Respondent No.1 under communication dated 26 March 2010 itself. The pendency of clarification, in view of above judgment, is no reason not to grant the benefits to the Petitioners, who are similarly and identically placed with M/s.Wadhwa Residency Pvt.Ltd. and Tata Steel Ltd., merely on the ground of delay and for the fact that the Petitioner No.1 handed over the area/land to the Respondents and specifically for the fact that the Petitioners' claim was already raised by various representations even prior to handing over the land and after the judgment so referred above, till filing of the present Petition in June 2014. The Respondents, however, have failed to decide the same in time raising objections of delay and laches. The subsequent developments pending the Writ Petition, including stated steps taken by the Respondents and the expenses incurred for advertisement, documentation, consultation fees etc. for the development of the property surrendered by the Petitioners for the proposed multi specialty hospital, cannot be the reason to deny the claim of the Petitioner. However, we are inclined to direct the Petitioner to pay the amount so spent by the Corporation.

24. For the reasons mentioned above, we pass the following order:

- (a) The Petition is allowed in terms of prayer clause (a) to (d). The Corporation to take necessary steps in accordance with law. The Petitioners shall complete necessary formalities and make necessary compliances.
- (b) The Petitioners are directed to pay to the Corporation the actual amount spent by the Corporation for advertisement, documentation, consultants' fees and other expenses incurred by the Corporation towards the initial steps taken by them for preparing the proposed multi specialty hospital within two weeks from the receipt of communication by the Corporation to the Petitioners, as stated in paragraph 21 hereinabove.
- (c) There shall be no order as to costs.
- (d) Parties to act on an authenticated copy of this Judgment.

(A.A.SAYED, J.)

(ANOOP V. MOHTA, J.)

