

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1918 OF 2012**

Mohd. Hanif Adam Dange & Ors.	...Petitioners
Versus	
State of Maharashtra & Ors.	...Respondents

Mr. Mitesh Acharya i/b Ms. Anjali Awasthi for the Petitioners

Mr. Milind More, A.G.P for the Respondent Nos. 1 and 2

Ms. Kiran Bagalia for the Respondent No. 3

Mr. Vinod Mahadik for the Respondent No. 4 - BMC

CORAM : A. S. OKA AND
REVATI MOHITE DERE, JJ.

FRIDAY, 12th JUNE, 2015

P.C. :

1. Heard learned Counsel appearing for the petitioners. The challenge in this petition under Article 226 of the Constitution of India is to the Notification dated 14th May, 2009 issued under Clause (c) of sub-section (1) of Section 40 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). By the said Notification, the Mumbai Metropolitan Regional Development Authority ('MMRDA')-the third respondent was appointed as the Special Town Planning Authority for the

area of Mumbai Airport. The learned Counsel appearing for the petitioners states that the petitioners had filed a writ petition claiming the same reliefs which are claimed in this petition and the said writ petition being Writ Petition No. 845 of 2012 was withdrawn by the petitioners on 30th July, 2012. The order dated 30th July, 2012 reads thus:

“At the request of learned Advocate for the petitioners, petition is allowed to be withdrawn with liberty to approach at appropriate stage.”

2. Within 24 days thereafter, the present petition has been filed, admittedly, containing the same prayers. From pages 23 and 32 of the petition, it appear that this petition was in fact ready on 17th August, 2012, as the same has been signed by the Advocate for the petitioner on that day. The only change in circumstance which is pointed out by the learned Counsel appearing for the petitioners is that on 11th August, 2012, an article was published in Times of India declaring that interim development plan prepared by the MMRDA has been approved by the State Government. It is pertinent to note that in the present petition, there is no challenge to the said development plan.

3. On plain reading of the order dated 30th July, 2012, it is obvious that the liberty was granted to the petitioners to file a fresh petition only after there is a change in circumstances, warranting filing of a fresh petition. The only change pleaded by the learned Counsel appearing for the petitioners is the news item published in Times of India. The news item is relating to the interim development plan. In this petition, there is no challenge to the interim development plan.

4. Therefore, filing of the present petition within few days after the earlier petition was withdrawn is nothing but an abuse of process of law.

5. Therefore, this is not a fit case where petitioner can be allowed to invoke discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The petition is accordingly rejected.

6. We, however, make it clear that no adjudication is made on the legal issues canvassed in this petition.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)