

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4686 OF 2014

M/s Rajmudra Real Estate Pvt. Ltd.
A company duly constituted under
the provisions of Companies Act and
having its registered office at
1558, Bldg No.34, Khernagar,
Near P.F. office, Bandra (East),
Mumbai – 400 051 and branch office
at Khandesh Mill Main Gate,
Station Road, Jalgaon 425001.
Through its Director –
Mr.Sukhdev Singh Mohinder Singh,
age: 67 Yrs., occu. Business,
R/o 7, Olympia Road, Thane (E)
Thane.

= **PETITIONER**

VERSUS

- 1) The State of Maharashtra
Through Principal Secretary
Urban Development Department,
Mantralaya, Mumbai032.
- 2) Municipal Corporation for City
of Jalgaon, Dist. Jalgaon
Through its Commissioner.
- 3) The Assistant Director of
Town Planning, Municipal
Corporation for City of Jalgaon
District Jalgaon.

= **RESPONDENTS**

Mr.PR Katneshwarkar, Adv. h/for Mr. SS Bora, Advocate
for Petitioner;

Mr.SW Mundhe, AGP for Respondent No.1-State;

Mr. PR Patil, Adv. h/for Mr. Shrikant S.Patil, Adv.
For Resp.Nos. 2 & 3.

CORAM : P.R.BORA, J.

DATE : 15th July, 2016.

ORAL JUDGMENT:

1) Heard. Rule. Rule made returnable forthwith and heard finally with consent of the learned Counsel appearing for the parties.

2) The petitioner has filed the present petition seeking directions against Respondent Nos.2 and 3 to issue 'No objection Certificate' to the petitioner for the change of user of the subject lands from 'industrial use' to 'residential use' as per the proposal submitted by the petitioner with the respondents on 12th October, 2012.

3) The facts, which are relevant for deciding the present petition, in brief, are thus
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a) The petitioner company did purchase City Survey No.2125 to 2131 and 2682 situated in

limits of Jalgaon City from the Court Receiver in an auction. The Sale certificate issued by the Court Receiver has been confirmed up to the Hon'ble Apex court;

b) The petitioner on 12th October, 2012 presented a proposal seeking change of user of a part of the said property from 'industrial' to 'residential' purpose. According to the petitioner, they have complied with all necessary formalities and have submitted all necessary documents, as are required by the Notification dated 31st March, 2008 and 3rd September, 2012. The Assistant Director of Town Planning, Jalgaon (ADTP) vide his letter dated 29th December, 2012 has recommended the proposal so submitted by the petitioner.

c) Since the proposal so submitted by the petitioners was not rejected by the respondents authorities within stipulated period, the petitioner claimed deemed approval of the

proposal so submitted by it on 12th October, 2012. However, since a dispute was raised as about the said deemed approval, the petitioner was required to file a writ petition before this Court bearing Writ Petition No.2683/2013.

d) In the said writ petition, Respondent No.3 filed an affidavit in reply specifically accepting that though some queries were initially raised the petitioner company has complied with almost all requirements, except the clear title of the land. This court, however, while disposing of the aforesaid writ petition No.2683/2013 held that the title of the petitioner company over the subject properties was confirmed up to the Hon'ble Apex court and thus ruled that the objection so raised as about the title of the petitioner was untenable.

e) On 9th May, 2013, the aforesaid writ petition was disposed of by this Court directing Respondent Nos.2 and 3 to expeditiously issue no

objection certificate for the change of the user to the petitioner pursuant to the proposal dated 12th October, 2012 if it otherwise complies with all other requirements.

f) As because the respondent/corporation did not take effective steps as per the order passed by this Court in Writ Petition no. 2683/2013, the petitioner filed Civil Application No. 12417/2013 with a prayer for suitable modification in the order so passed and further directions to Respondent Nos. 2 and 3 for issuance of 'No objection Certificate' as prayed by the petitioner, vide their proposal dated 12.10.2012.

. The aforesaid Civil Application was, however, disposed of by this Court observing that if the respondents are raising some frivolous objections and on the basis of such objections not granting 'No objection Certificate', the applicant i.e. the present petitioner, is entitled to assail the same independently. The

petitioner company therefore filed the present petition assailing the objections raised by the respondents for not granting 'No objection Certificate' to the petitioner for conversion of the user of the subject properties from 'industrial' to 'residential'.

4) Respondent Nos.2 and 3 have filed their affidavit in reply and have thereby resisted the contentions raised by the petitioner in the writ petition.

5) On 5th July, 2016, the present matter was heard for some time by this Court and after having noticed that the petitioner has filed Rejoinder to the affidavit in reply filed on behalf of Respondent No.2 and 3, asserting therein that each and every compliance has already been made, the Respondent Corporation was directed to file a fresh affidavit explaining therein as to which are the aspects/objections, still not complied with by the petitioner.

Accordingly, an affidavit in reply was filed by one Chandrakant Rangnath Nikam, Assistant Director of Town Planning, Municipal Corporation on 13th July, 2016. In the said affidavit in reply, Respondent Nos.2 and 3 have explained the non-compliances on the part of the petitioner.

6) Today, when the matter was taken up for hearing in the first Session, after arguing the matter for some time, the learned counsel appearing for the parties jointly requested the Court to take up the matter in second session. It was brought to the notice of the court that the concerned Officers of the Corporation are present and as such, the parties will sit together and will ascertain the factual aspects as to which compliances are made by the petitioner and which are yet to be made. Accordingly, the matter was adjourned till afternoon session.

7) In the afternoon session, the learned

counsel appearing for the respondent/corporation submitted that according to the corporation, the petitioner has not reserved and/or shown the amenity space as required under the Development control Rules (for short, the DCR Rules) while submitting the proposal for conversion of the subject land from industrial use to the residential use.

. The contention so raised by learned counsel for the respondent corporation was resisted by learned counsel for the petitioner. The learned Counsel submitted that from the documents on record, the petitioner can satisfy that the amenity space reserved in the concerned proposal is in compliance with the provisions of the law and the DCR Rules.

8) From the submissions so made by learned counsel appearing for the respective parties, it is thus evident that now the controversy has been narrowed down only to the extent whether the amenity space, as has been reserved and shown in

the proposal by the petitioner is in compliance with the MRTTP Act and the DCR Rules.'

9) Though it was further contended by learned counsel for the respondent Corporation that the petitioner has asked for an FSI of two, which cannot be granted and only 0.09 FSI is permissible, I am not entering into the said controversy for the reason that in the present petition that may not be the issue having material bearing. The parties are at liberty to agitate the said issue separately and the Municipal Corporation may take a decision thereon in accordance with law.

10) The learned Counsel for the petitioner brought to my notice that the petitioner has provided amenity space to the extent of 32713.66 sq. mters. The learned counsel further submitted that for other amenities, i.e. for roads and path ways, the petitioner has provided a space of 14371.245 sq. mtrs. And for open space the area

of 18495 sq. metres is kept reserved. The learned counsel submitted that according to DCR Rules for the conversion of approximately 98000 sq.metr s of industrial land for residential purpose, the petitioner is required to provide approximately 24500 sq.metr s towards amenities space and out of the said amenity space about 12250 sq.metr s should be for open to sky amenity. The learned counsel submitted that as per the DCR rules, 25% of the land is required to be reserved for the above purposes; whereas the petitioner has reserved more than the said percentage of land towards the amenity space and towards the open space. The learned counsel submitted that such objections are being repeatedly raised in spite of the fact that the Assistant Director, Town Planning, has already considered the said aspects while granting the approval to the sub-division plan submitted by the present petitioner. The learned Counsel submitted that the copy of the approved sub-division plan, which is signed by the Municipal Commissioner as well along with the

Assistant Director of Town Planning, is filed on record at page 218-A. Taking me through the said approved sub-division, the learned Counsel brought to my notice that on the extreme right side of the said plan, the petitioner has provided all details about the areas reserved for different purposes. The learned counsel submitted that before approving the said sub-division, thorough enquiry was carried out by the Assistant Director of Town Planning and only thereafter the plan has been approved which is concurred by the Municipal Commissioner.

11) Countering the submissions made on behalf of the learned counsel appearing for the petitioner, learned Counsel for the corporation submitted that the petitioner is expected to leave and/or reserve 25% of the total land as an amenity space and it does not include the space kept reserved for the roads and path ways. The learned counsel submitted that approximately 40,000 sq.mtrs space was required to be kept

reserved by the petitioner towards the amenity space as against which, the space shown to have been reserved for amenity space is only 24,000 sq. mtrs. The learned counsel invited my attention to the DCR Rules and more particularly Modification No.1 to Schedule-A which is an accompaniment to Notification No. TPS-1106/442/CR-53/06/UD-9 dated 31.3.2008 (at page 41 of the Writ Petition), which reads thus, -

"12.3.1(iv) In such layout of subdivision each more than 5 ha. In area, 25% of land for public utilities and amenities like electric sub-station, bus station, sub post office, police outpost, garden, play ground, school, dispensary and such other amenities, shall be provided. These area will be in additions to the recreational space as required to be provided under these regulations provided that, 50% of the amenity space shall be designated as open user like recreational ground, play ground etc."

The learned Counsel submitted that in the light of aforesaid provision, the space as is shown to have been reserved by the petitioner for roads and path ways cannot be computed or considered as the space reserved for the amenities. The learned counsel submitted that if such compliance is made by the petitioner, the Corporation may not be any difficulty in issuing No objection certificate, as is asked by the petitioner.

12) On such submission being made on behalf of the Respondent/corporation, the learned Counsel appearing for the petitioner, invited my attention to the definition of 'Amenity space' in the MRTP Act. Section 2(2) of the MRTP Act, defines 'Amenity'. I find it appropriate to reproduce the said definition, which reads thus,

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"Amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and

colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences."

13) Referring to and relying upon the definition as provided in the MRTTP Act, the learned Counsel submitted that the objection raised by the Corporation that the space for amenity does not include the space reserved for roads and path ways, is unsustainable. The learned counsel submitted that even the DCR Rules, on which reliance has been placed by the Respondent/Corporation do not in any way indicate that the space reserved for roads and path ways will not be computed or considered towards the space of amenity. The learned Counsel relied upon the Judgment of Division Bench of this court in the case of Wadhawa Residency Pvt. Ltd. and Mr. Manohar M. Chhabria Vs. Municipal Corporation of Greater Mumbai, a statutory Corporation constituted and ors. reported in 2014 (4) Bom.CR.

845, and more particularly to the observations made by the Division Bench of this court in para 6 of the said judgment. The Division Bench has observed that, "The MRTPA Act being an Act to provide for planned development, the provisions of the DCRs will have to be read purposively and harmoniously and not disjunctively." In view of the observations so made, it was argued by the learned counsel that the DCR Rules, which are not in consonance with the provisions of the Act may not prevail. The learned Counsel submitted that in the previous writ petition, all these aspects were argued and considered by the court, however, only with an intention to harass the present petitioner, repeatedly same objections are being raised and the order passed by this Court in the aforesaid writ petition has not been complied with.

14) After having considered the arguments advanced by the learned counsel appearing for the respective parties and on perusal of the material

on record and after having gone through the relevant provisions in the MRTP Act and the DCR Rules, the objection raised on behalf of the Respondent/Corporation that the petitioner has not reserved the adequate space as the 'amenity space', apparently appears unsustainable. Though it was sought to be canvassed by the learned Counsel for the Corporation that the space for amenity does not include the space for roads and path ways, nothing has been brought to my notice by the learned counsel even from the DCR Rules, showing that the 'amenity' will not include space reserved for roads and path ways and further that a separate space is required to be made reserved for roads and path ways other than the space for amenity. On the contrary, the definition of 'amenity', as provided under MRTP Act clearly evinces that the amenity means, roads, streets, open space, parks etc. Secondly, as has been observed by the Division Bench of this Court in the case of Wadhawa Residency (cited supra), the provisions of MRTP Act being an Act to provide

for a planned development, the provisions of DCR Rules will have to be read purposively and harmoniously and not disjunctively.

15) I further find substance in the submissions made on behalf of the petitioner that while approving the sub-division plan, the Assistant Director of Town Planning, Municipal Corporation, Jalgaon has examined all these aspects and after being satisfied that all due compliances are made, that he has approved the said sub-division. It is to be further noted that the sub-division plan has also been signed by the Commissioner of the Municipal Corporation. I need not to repeat the factual aspects as are shown in the said sub-division plan. Suffice it to say that it provides all statistics as about the spaces reserved for different purposes and the approval to the said sub-division plan means that spaces as shown to have been reserved for the particular purpose, have been accepted by the Competent Authority.

16) The learned Counsel was further right in submitting that in the earlier writ petition, the then Assistant Director of Town Planning has filed an affidavit contending therein that all compliances were made by the petitioner except the title of the property. It is to be further noted that similar objections are being raised again and now a plea has been taken in the affidavit filed by the present Assistant Director of Town Planning, Municipal Corporation, Jalgaon that in the previous affidavit, in inadvertently, a statement was made by the then Assistant Director of Town Planning that all compliances were made. I am not at all convinced with the submission so made and the statement so made is liable to be rejected.

17) It is not in dispute that for conversion of the land from 'industrial' to 'residential' use, 25% of the said land is required to be kept reserved towards the amenities. After having considered the particulars provided by the

petitioner, there remains no doubt that more than 25% space is provided by the petitioner towards the amenities. I reiterate that in addition to that, some more space has been provided towards the roads and pathways separately. It is thus evident that the necessary compliances are made by the petitioner. I am, therefore, inclined to allow the present petition. Hence, the following order, -

ORDER

- (i) Respondent Nos.2 and 3 are directed to expeditiously comply with the order passed by this Court on 9.5.2013 in Writ Petition No.2683/2013;
- (ii) Rule is made absolute in aforesaid terms.
- (iii) In the circumstances of the case, no order as to costs;

sd/-
(P.R.BORA)
JUDGE

bdv/