

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1276 OF 2013

Sarang Avinash Kamtekar.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. G. S. Godbole i/b Mr. S. R. Ronge for the Petitioner.

Ms. M. P. Thakur, AGP for Respondent No.1-State.

Mr. A. A. Kumbhakoni, Senior Advocate with Mr G. H. Keluskar for Respondent No. 2.

Mr. V. D. Patil for Respondent No. 3.

Coram : SHANTANU KEMKAR &
RANJIT MORE, JJ.

Date : **April 29, 2016.**

P. C. :

1. Parties through their counsel.
2. In this petition, filed under Article 226 of the Constitution of India, the Petitioner is seeking following reliefs :

“(a) this Hon'ble Court may be pleased to issue a writ of mandamus and/or any other writ and/or order and/or direction in the nature of mandamus thereby directing the Respondent to forthwith withdraw that part of the directive dated 24th December 2008 and 10th March 2010 issued under section 154 of the Act in so far as it directs/orders to bring into effect the proposed modification of implementing 2.5 FSI to the IHSDP (Integrated Housing and Slum Development Programme) and BSUP (Basic Services for Urban Poor) schemes pending the mandatory procedure mentioned in section 37 of the

Maharashtra Regional and Town Planning Act, 1966, hereto marked and annexed as Exhibit-C and D respectively to this Writ Petition and further this Hon'ble Court may be pleased to direct the Respondent to forthwith withdraw the supplementary directions issued under section 154 of the said Act in so far as it has the effect of giving a retrospective effect to the proposed modification w.e.f. 24/12/2008 issued by the Respondent dated 8th October 2012 being Exhibit-E and F respectively.

(b) this Hon'ble Court may be pleased to issue a writ of Certiorari and/or any other writ and/or order and/or direction in the nature of Certiorari thereby quashing and setting aside that part of the directives dated 24th December 2008 and 10th March 2010 issued under section 154 of the Act in so far as it directs/orders to bring into effect the proposed modification of implementing 2.5 FSI to the IHSDP (Integrated Housing and Slum Development Programme) and BSUP (Basic Services for Urban Poor) schemes pending the mandatory procedure mentioned in section 37 of the Maharashtra Regional and Town Planning Act, 1966, hereto marked and annexed as Exhibit-C and D respectively to this Writ Petition and further this Hon'ble Court may be pleased to direct the Respondent to forthwith withdraw the supplementary directions issued under section 154 of the said Act in so far as it has the effect of giving a retrospective effect to the proposed modification w.e.f. 24/12/2008 issued by the Respondent dated 8th October 2012 being Exhibit-E and F respectively."

3. While considering the Petitioner's prayer for interim relief, on 8th October 2013 this Court after hearing the parties passed following ad-interim order :

1. *That part of the impugned direction which directs that pending sanction of the modification by the Government under section 37(2) of the said Act, the modification shall come into effect immediately, shall remain stayed till the final disposal of the petition ;*
2. *We make it clear that it will be open for the second Respondent to carry out construction and to complete the construction to the extent of 1.00 FSI. We make it clear that the second Respondent shall not carry out any construction in excess of 1.00 FSI. It is obvious that if construction is confined to 1.00 FSI, it will be open for the Municipal Corporation to apply for and to obtain occupation / completion certificate ;*
3. *We direct the third Respondent to act upon the notice dated 12th September, 2013 and submit a report to the State Government on or before 15th December, 2013. We direct the State Government to consider the report which may be submitted by third Respondent and take the final decision on the said report before the end of February 2014."*

4. The learned Counsel appearing for the Respondents submitted that thereafter, the planning authority has followed the procedure and submitted the proposal dated 13th December 2013 to the State Government as provided under section 37(1) of MRTP Act. He further submitted that the State Government after considering the proposal, vide order dated 3rd September 2015, has sanctioned the same.

5. The fact that the proposal as aforesaid was sent and has been sanctioned by the State Government is not disputed by learned Counsel appearing for the Petitioner. He, however, submitted that the said proposal is not in conformity with the provisions of the MRTP Act and that challenging the same the Petitioner has filed a Writ Petition No. 11396 of 2015 raising all the grounds including the ground of validity of the proposal and its sanction with retrospectivity. In view of the fact that on the basis of subsequent events, the Petitioner has filed Writ Petition No. 11396 of 2015, in our considered view, nothing survives in this petition. As a result, with liberty to the Petitioner to assail all the grounds in the subsequent petition, i.e., Writ Petition No. 11396 of 2015, we dispose of this writ petition as infructuous.

6. In view of the disposal of the writ petition, civil application taken out in this writ petition does not survive and the same is accordingly disposed of.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]