

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5388 OF 2015

Jai Sai Developers	Petitioner
Versus	
The Commissioner Kolhapur	
Municipal Corporation And Others	...Respondents

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Mr.Y.P. Narvankar for the Petitioner.
Mr. S.M. Kamble for Respondent Nos.1 and 6A,
Mrs. R.A. Salunkhe, AGP for the State.

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**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 26 OCTOBER, 2016.

P.C. :

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner is challenging resolution dated 7 January 2015, sofar as it relates to building plan of the Petitioner in respect of a plot of land situated at Ward 71, RSN No.843, Plot No.1. By the said resolution, Respondent No.6A directed the Petitioner to close all the doors, windows and balconies, which are facing to Kolhapur Central Jail, Kalamba. Respondent No.6A-Committee also held that the Petitioner cannot be permitted to increase the height of the existing building or make the additional constructions. This decision was taken in pursuant of the resolution dated 4 December 2013 issued by the Government of Maharashtra under Section 154(1) of the Maharashtra Regional and

Town Planning Act 1966.

3 It is not disputed that the Petitioner has constructed ground plus five upper floors after obtaining prior permission of the Planning Authority in pursuant of the earlier circular dated 16 June 2008, issued by the Deputy Inspector General of Jail, Western Division, Pune. After the completion of the said construction, the said Government resolution dated 4 December 2013 was issued under Section 154(1) of the Maharashtra Regional and Town Planning Act 1966.

4 This resolution itself shows that the same is prospective in its operation and cannot be applied retrospectively and the Division Bench of this Court in the case of **D.B. Realty Ltd. Vs. State of Maharashtra**¹, was also pleased to held that the said resolution dated 4 December 2013 is prospective in its operation.

5 In above circumstances, Mr. S.M. Kamble, learned Counsel for Respondent No.1 and 6A on instructions of Mr. Arunkumar Gavali, Junior Engineer, Town Planning Department, fairly stated that the impugned resolution directing the Petitioner to close doors, windows and balconies facing to Kolhapur Central Jail, Kalamba, could not have been given. In the light of this statement, Mr. Narvankar, learned Counsel for the Petitioner submits that the Petitioner is not insisting for revised permission to additional constructions on the existing structure. The statement is accepted.

¹ Writ Petition No.2340 of 2014 decided on 23 December 2014.

6 In the light of above, Writ Petition is disposed of by passing the following order.

: O R D E R :

- (i) The impugned resolution of Respondent No.6A, sofar it relates to directions to the Petitioner to close the doors, windows and balconies, facing to the Kolhapur Central Jail, Kalamba, is quashed and set aside;
- (ii) Sofar the resolution holding the Petitioner ineligible to carry out the additional constructions on the existing structure or to increase the height of the existing structure is concerned, same is not disturbed and same will remain in operation.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]