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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
CIVIL APPLICATION NO.104 OF 2016 IN
CIVIL APPLICATION NO.221 OF 2013 IN
PUBLIC INTEREST LITIGATION NO.217 OF 2009

Amit R. Goenka & Ors. ...Applicants
In the matter between

Shri Pandurang Patil ...Petitioner
vs.

Municipal Corporation of
Greater Mumbai & Anr. ...Respondents

Mr.A.A.Kumbhakoni, Senior Advocate a/w Mr.Aditya
Thakkar, Ms Jyotsana Kondharka, Rohneel Mohite i/b
Vigil Juris for the applicant in CAI/103/2016
Ms Komal Punjabi for the BMC

CORAM : A.S.OKA, & A.A.SAYED, JJ.
DATE : SEPTEMBER 22, 2016

P.C.:

1 Heard the learned senior counsel for the applicant. In substance, the present application seeks modification of the directions contained in the order dated 26th and 29th February 2016 passed by this Court in CAI No.221 of 2013. It is not in dispute that as of today, the Judgment and order dated 26th and 29th February 2016 has attained finality. This Judgment and order records a finding on admitted facts that in the city of Mumbai there is hardly any implementation of the Municipal Solid Wastes Management and Handling Rules, 2000 (for short MSW Rules). Shocking state of affairs is recorded therein on the basis of the data furnished by the

Mumbai Municipal Corporation itself. The data showed that as on 2nd March 2015, 9400 M.T of solid waste was being generated in the city every day and only one facility exists in the city to deal with such a huge quantity which complies with the requirements of the MSW Rules. The said facility at Kanjur is having capacity of only 3000 M.T per day. The places where remaining solid waste of more than 6000 M.T is being dumped every day do not have facilities as required by MSW Rules. Thus, every day, the Municipal Corporation is indulging in gross illegality. It is also noted in the said Judgment and order that the generation of the solid waste is likely to touch 10,000 to 11,500 M.T. per day within one or two years. The order notes that the time granted to the Municipal Corporation under the final Judgment and Order dated 2nd April 2013 in PIL 217 of 2009 to create the facilities in terms of MSW Rules has expired long back.

2 Therefore, while disposing of Civil Application No.221 of 2013 filed by the Mumbai Municipal Corporation for grant of extension of time, by the aforesaid Judgment and order dated 26th and 29th February 2016, this Court directed several measures to be taken by the Municipal Corporation. Clause (i) of paragraph 30 of the said Judgment and Order reads thus:

“(i)The Mumbai Municipal Corporation is hereby granted time till 30th June 2017 to comply with the directions

contained in the judgment and order dated 2nd April 2013 passed in Writ Petition No.1740/1998 and other connected matters including PIL No.217 of 2009. Within the extended time, the Mumbai Municipal Corporation shall establish all the facilities in terms of the directions issued in the judgment and order dated 2nd April 2013 which will be capable of processing municipal solid waste of the quantity of at least 11,000 MT per day. Needless to state that the said facilities shall be strictly in accordance with the MSW Rules. The prayer for extension of time is granted as above, subject to the following conditions:

(a) The development permissions/IOD shall not be granted by either the said Municipal Corporation or the State Government on the Applications/proposals submitted from 1st March 2016 for construction of new buildings for residential or commercial use including Malls, Hotels and Restaurants. Such Applications shall be processed, but the IOD and/or commencement certificate shall not be issued. It is obvious that in view of this restraint, no one can take advantage of deeming provisions in the DCR and MRTP Act. Needless to state that this condition

will not apply to all the redevelopment projects covered by the clauses (5), (6), (7) (8), (9) and (10) of the DCR No. 33. This condition will not apply to the buildings proposed to be constructed for the hospitals or educational institutions. The condition shall not apply for consideration of the proposals for repairs/ reconstruction of the existing buildings which do not involve use of any additional FSI in addition to the FSI already consumed. These restrictions shall apply only to the Applications/ proposals submitted from tomorrow i.e. 1st March 2016;

(b) The State Government and/or the Municipal Corporation shall undertake a scientific assessment of impact on the generation of the municipal solid waste including construction waste in the city by construction of new buildings and new development projects. The study shall include the assessment of the impact of the constructions likely to come up in the city for a period of at least 10 years. The State Government shall also take all the steps for the implementation of the directions in the circular issued on 15th February 2016 in accordance with

section 154 of the MRTP Act;

(c) Even if there is an amendment of the DCR made hereafter providing for grant of additional FSI in the city, the benefit of the same shall not be extended to the building proposals/ Applications for development permissions including for the re-development projects submitted from tomorrow;

(d) Immediate steps shall be taken for amending the Development Control Regulations not only for giving effect to the directions issued in terms of the Circular dated 15th February 2016 but also for incorporating the suggestions in paragraph 2.2 of the additional affidavit of Shri Swadheen Kshatriya dated 15th February 2016;"

3 By the present application, modification is sought in respect of the embargo imposed by the aforesaid sub-clause (a) of clause 1. The applicants are claiming to be owners of the property admeasuring 664.30 sq meters at Juhu, Mumbai. It is averred in the application that out of 664.30 sq meters, an area of 540 sq meters is already constructed upon and the applicants have acquired the said property with the said said construction. The contention is that the applicants want to demolish the existing structure and construct a new building for the use of their own family consisting

of 15 members. In clause 4 of paragraph 14 of the application, it is stated that the applicants desire to use area of 540 sq meters which amounts to utilization of FSI of less than 1.00. It is contended that the applicants may be allowed to develop the said property by carving out an exception to the order of this Court on the ground that the applicants desire to install their own plant for treating solid waste. The details of the plant intended to be set up have been set out in the application.

4 The Judgment and Order dated 26th and 29th February 2016 takes a note of the shocking state of affairs that in the business capital of India. More than 2/3rd of the solid waste generated every day in the city is being dumped completely in breach of the MSW Rules. It is not as if that the applicants have no place to stay. The applicants are already having a building on their property measuring 540 sq meters (approximate 5400 sq ft.). It is not their case that the building in existence is in a dilapidated condition and is required to be pulled down for that reason. Moreover, reconstruction of existing buildings is not prohibited under the aforesaid Order provided any additional FSI is not used. The assurance to set up a plant on the same property is not worth considering. There is no guarantee that the applicants or their transferees/successors will keep the plant in proper running condition. Moreover, the more important issue will be the effect of allowing setting up of

such a plants in a very thickly populated residential locality. Another serious issue will be of the effect of allowing setting up of such waste treatment plants on residential plots on the environment.

5 There is nothing on record to show that the Municipal Corporation has taken any steps to improve the situation in the city by setting up additional facilities for dealing with solid waste.

6 If such applications are entertained especially when the applicants have not pointed out any immediate necessity to carry out the construction or existence of extraordinary circumstances, this Court will be flooded with the several such applications and ultimately the very object of passing the order dated 26th and 29th February 2016 will be completely defeated. In our view, absolutely no case is made out for making a departure from the directions issued in the order dated 26th and 29th February 2016. Civil application is rejected.

(A.A.SAYED,J.)

(A.S.OKA,J.)