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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10139 OF 2014

Thane Shahar Zopadpatti Nagri Vikas Samiti,
Thane.

.. Petitioner

Vs

The State of Maharashtra and Another.

.. Respondents

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Shri Sandesh D. Patil for the Petitioner.

Shri V.S. Gokhale, AGP for the Respondent No.1.

Shri Mandar Limary for the Respondent No.2.

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CORAM : A.S. OKA & C.V. BHADANG, JJ

DATED : 6TH JANUARY 2016

PC.

1. Heard the learned counsel appearing for the Petitioner. The first challenge in this Petition under Article 226 of the Constitution of India is to the Notification dated 11th September 2014 (Exhibit-E to the Petition) issued by the State Government in exercise of powers under Sub-section (2) of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). By the said Notification, the Appendix-S to the Development Control Regulations for the City of Thane which deals with the redevelopment/construction of accommodation for the censused hutment dwellers through Owners/Co-operative Societies of Slum dwellers has been amended. The objection of the Petitioner is to Clause (11) of the Appendix-S as sanctioned by the State Government under the impugned Notification.

2. The learned counsel appearing for the Petitioner pointed out that prior to the impugned amendment to Appendix-S, it was provided that approval to the scheme covered by the Appendix-S shall be given by a Committee comprising of the Commissioner, Vice President and the Chief Executive Officer, Maharashtra Housing and Area Development Authority and the Collector of the District. He pointed out that while sanctioning the modifications, the power to grant approval to the scheme has been conferred on the Chief Executive Officer of the Slum Rehabilitation Authority established in accordance with the provisions of the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short “the said Act of 1971”). He urged that such a major change has been made by the State Government without inviting objections. He submitted that no opportunity was made available to the Petitioner to raise objection to such a drastic modification. The said Notification to the extent of modification made to Item No.19 is completely illegal. His next submission is based on another Notification issued on the same date. By the said Notification, the jurisdiction of the Slum Rehabilitation Authority for implementing the Slum Rehabilitation Schemes in the areas comprising of Mumbai has been extended to the areas comprising of the Municipal Corporation of City of Thane. His submission is that the Authority at Mumbai is already overburdened with the large number of Slum Rehabilitation Schemes which are being implemented

in the City of Mumbai and which are in the pipeline. He submitted that it is pointed out in the Petition that as of today, more than 200 proposals are pending in the City of Thane and therefore, the Authority at Mumbai will not be able to effectively discharge its duties and approval of proposals will be delayed.

3. We have given careful consideration to the submissions. We have perused the provisions of Section 37 of the MRTP Act. Sub-section (1) of Section 37 of the MRTP Act provides for notifying proposed modifications. The power of the State Government is to deal with the modifications proposed in the Sub-sections (1) or (1A) of Section 37 of the MRTP Act. Sub-section (2) of Section 37 of the MRTP Act specifically provides that the State Government can sanction proposed modifications with or without any change. The State Government has a power to decline to accord sanction to the proposals notified in terms of Sub-section (1) or (1A) of Section 37 of the MRTP Act. By the modification approved by the State Government, the power to grant approval to the rehabilitation scheme covered by the Appendix-S has been conferred on the Chief Executive Officer of the Slum Rehabilitation Authority established under the said Act of 1971. The Slum Rehabilitation Authority established under the said Act of 1971 is under obligation to perform several duties such as improvement of slum areas including the formation of Slum Rehabilitation Schemes.

Therefore, looking to the statutory functions of the said Authority, there is nothing wrong if the power is conferred by the State Government of granting approval to the schemes covered by the Appendix-S on the Chief Executive Officer of the Slum Rehabilitation Authority established under the said Act of 1971. We may note here that the Appendix-S deals with the regulation of the redevelopment/construction of accommodation for censused hutment dwellers. Considering the powers conferred on the Slum Rehabilitation Authority established under the said Act of 1971, there is nothing wrong if the Chief Executive Officer of the Slum Rehabilitation Authority is given power to grant approval to the scheme which is for the benefit of the censused hutment dwellers. Moreover, it cannot be said that the modification made by the State Government is a major modification. We may also note here that this Court has repeatedly held that the power to frame Development Control Regulations under the MRTP Act partakes character of a legislation function. The scope for interference in a Petition under Article 226 of the Constitution of India while dealing with the legislative function is very limited. Therefore, we find no merit in the first challenge in the Petition.

4. As far as the second challenge is concerned, it is based on the apprehension that the Chief Executive Officer of the Slum Rehabilitation Authority which is established for the area comprising of

Brihanmumbai may not be effectively able to discharge its duties in relation to the Slum Rehabilitation Schemes in the City of Thane. If that be so, it is for the Petitioner to make a representation to the State Government. If the Petitioner is able to satisfy the State Government that the Chief Executive Officer of the Slum Rehabilitation Authority established for the area comprising of Brihanmumbai will be overburdened as there are large number of pending proposals in the City of Thane, we are sure that the State Government will consider the proposal and take appropriate action.

5. If such representation is made along with the necessary data, the State Government shall decide the same in accordance with law as expeditiously as possible and in any event within a period of three months from the date of making representation.

6. Subject to what is observed above, the Petition is rejected.

(C.V. BHADANG, J)

(A.S. OKA, J)