

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 42 OF 2014

Sarti Seva Sangh

... Petitioner.

V/s.

The State of Maharashtra & Ors.

... Respondents.

None for the Petitioner.

Ms. Trupti Puranik, Advocate for the Respondent Nos.2 & 3.

Mr. Rajiv Narula i/by Jhangiani Narula & Associates for
Respondent No.4.

Mrs.Sweta Moghe i/by Mehta & Girdharlal for Respondent
No.5.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 20th SEPTEMBER, 2016

P.C. :

1 None appears for the Petitioner. Heard the learned
counsel appearing on behalf of Respondent No. 4 and the
learned counsel appearing for the Corporation.

2 By this Petition filed under Article 226 of the
Constitution of India, as a public interest litigation the
Petitioner seeks following reliefs :

(a) That this Hon'ble Court may pleased to call
for record of respondent no. 2 and 3 authority and

after verifying the legality and propriety of the allegations made by the petitioner, this Hon'ble Court may please to issue writ of certiorari or writ in the nature of certiorari quashing plan dated 16/09/2013 approved under file no. CE/9548/WS/AK dated 13th September, 2013 and sanctioned and accorded by respondent no.2 in favour of respondent no. 4 and 5 permitting them to load excess FSI to the tune of 226.79 sq. mtrs. on the plot of land bearing Survey no.54, Hissa no.4, corresponding to CTS No.472 (pt.) and TDR on said excess plot area to the tune of 226.79 sq. mtrs.;

(b) That this Hon'ble Court may please to call for record of respondent no. 2 and 3 authority and after verifying the legality and propriety of the allegations made by the petitioner, this Hon'ble Court may please to issue writ of certiorari or writ in the nature of certiorari quashing plan dated 16/09/2013 approved under file no. CE/9548/WS/AK dated 13th September, 2013 and sanctioned by respondent no.2 in favour of respondent no. 4 and 5 permitting them to load fungible FSI on the TDR on the plot of land bearing Survey no. 54, Hissa no. 4, corresponding to CTS No. 472(pt.) and TDR on said excess plot area to the tune of 226.79 sq. mtrs.;

(c) Pending the hearing and final disposal of petition, this Hon'ble Court may please to stay further construction work on the basis of sanction of plan dated 16/09/2013 under file no. CE/9548/ WS/ AK dated 13th September, 2013 granted by respondent no.2 in favour of respondent no. 4 and 5 on the plot of land bearing Survey no. 54, Hissa no. 4, corresponding to CTS No. 472(pt.)

(d) Ad-interim relief in terms of prayer clause (c) be granted;

(e)

(f)

3 Respondent No.4 has filed Affidavit-in-reply. He has stated that there is no public interest involved in this petition. It is submitted that the petition has been filed at the behest of one of the disgruntle members of the society. It is submitted that one Mr. Ashun H. Lahir has filed a suit being L. C.Suit No. 3124 of 2013 in the City Civil Court, Bombay against the Respondent No.4, in which no interim relief was granted by the court. It was submitted that a Petition has to be filed by said Ashun H. Lahir, who is a member of the society. Secondly, it is submitted that there is gross delay in filing the petition. In para-5 of the affidavit -in-reply, it is

mentioned that the Corporation has granted commencement certificate in June, 2011 and thereafter the construction of Wing C-1 and another Wing being Wing no. C-2 is completed. However, so far as Wing C-2 is concerned, the construction is completed upto 6th floor. It is submitted that the construction of the second Wing of the building is completed. In the reply, on merits of the averments made under para-11 onwards, para - wise comments have been offered.

4 We are satisfied that there is no public interest involved in this petition. However, aggrieved persons can always approach this court if they are aggrieved by any action of the Respondent No.4. Reserving the right of such person to approach the appropriate forum or court, this petition is disposed of.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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