

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO.872 OF 2015

India Land Hotels Mumbai Private
Limited (previously known as Bhagat
Leasing Limited)

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Milind Jadhav with Ms Aradhana Bhansali and Mr. Amit
Kolekar i/b. Ms Rajani Associates for the Petitioner.
Ms Geeta Shastri, A.G.P. for Respondent No.1 to 4-State.
Mr. H.C. Pimple for Respondent Nos. 5 and 6-BMC

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

DATED : 4th JULY, 2016.

P. C. :

Heard the learned counsel for the respective parties.

2. By this petition, the Petitioner is seeking following reliefs:-

“A. That this Hon'ble Court be pleased to grant a writ of Mandamus or writ, direction or order in the nature of Mandamus or any other order or direction declaring the release of the Final Plot No.936 of TPS IV (the said Plot) belonging to the Petitioner from the designation of “Cinema” and to further declare that the said designation of Cinema

shown on the said Final Plot No.936 has lapsed;

B. That this Hon'ble Court be pleased to grant a writ of Mandamus, or a writ, direction or order in the nature of Mandamus or any other order or direction declaring the said Final Plot No.936 being available to the Petitioner for the purpose of development as permissible in the case of adjacent land in the relevant Development Plan;

C. That this Hon'ble Court be pleased to grant a writ of Mandamus, or a writ, direction or order in the nature of Mandamus or any other order directing the Respondent No.1 State Government to notify by an order in the Official Gazette the release of Final Plot No.936 of TPS IV, Mahim, from the designation of "Cinema" under the provisions of Sub-Section 2 of Section 127 of the MRTP Act, 1966;"

3. On behalf of the State Government Mr. Sanjay Shantaram Banaiy, Deputy Director, of Town Planning, Urban Development Department, has filed an affidavit dated 4th April, 2016. In para Nos.12, 13, 14 and 16 of the said affidavit following averments are made:

"12. I say that, the Development Plan is prepared under the provisions of Section 21 to 31 under Chapter-III of the Maharashtra Regional and Town Planning Act, 1966. As per

Section 25 of the said Act, the Existing Land Use Map is to be prepared after carrying out a survey of the lands within the jurisdiction of the Planning Authority. The Existing Land Use Map must indicate the existing use of land and all existing features in the Town or city, including existing roads, railways, water-bodies, residential, commercial, industrial user as well as the public purpose amenities and facilities existing in the city. This includes all existing Government, Semi-Government Offices, High Court, Post Office buildings etc. and also the social amenities such as Schools, Solleges, Gardens, Playgrounds, Cinema Theater etc. All these existing amenities and facilities are shown as existing by showing that particular user by black hatch in the Development Plan and such existing user of land which are shown in black hatch as existing amenities / facilities are not to be acquired. Under Section 22 of the MRTTP Act, the proposals for allocation, designation and reservation are to be indicated in the Development Plan.

I say that, therefore the proposal for designation which is not an existing amenity is required to be shown without black hatch. Hence section 31(5) clearly provide that proposal for designation in the Development Plan in respect of land not vesting in the Planning Authority are not to be shown, unless it is satisfied that the Planning Authority will be able to acquire such land. Therefore, keeping all the aforesaid factors in mind, the Development Plan is prepared whereby existing amenities are shown in black hatch line as

same are not to be acquired but in view of Section 25 are required to be indicated in the Development Plan as existing amenities and facilities available in the city. The reason behind showing existing amenities in Development Plan is to ascertain or determine the future requirement of such particular amenities as per the planning standards for the purpose of laying down proposed designation, proposed allocation and reservation which are to be acquired.

13. I say that, the suit land is shown as existing amenity / facility as Cinema in black hatch, as can be seen from the part plan of the suit land shown in the sanctioned revised Development Plan. The legend of the said part plan shows how the existing amenities /facilities are earmarked by black hatch lines in the said part plan. Hereto annexed and marked as Exhibit-4 is the true extract of the part of the sanctioned revised Development Plan pertaining to the suit land with legend and also with list of proposed reservations /existing amenities for public purpose in the Revised Development Plan pertaining to land in question is part of Development Plan and Development Plan Report. Hereto annexed and marked as Exhibit-5. The land in question bearing Final Plot No.936 is shown as an existing Cinema and not a proposed designated Cinema under Section 22(b) & (c) or proposed reservation under Section 22 (f) and therefore no appropriate authority is shown as same is not proposed designation or proposed reservation

required to be acquired with reference to provisions under Section 31 (5) read with Section 127 of MRTP Act, 1966.

14. In view of above, it is clear that such existing user are not the proposed designations which are to be acquired. These are just indicated as existing amenities/facilities available in the city, as per the Existing Land Use Map, which is considered for framing the planning proposals for preparation of Development Plan. Therefore, the Government has rightly rejected the notice under Section 127 of the Maharashtra Regional and Town Planning, 1966 served by the petitioner.

16. I say that, Section 127 of the MRTP Act will apply when there is a proposed designation or proposed reservation on the Development Plan for 10 years and the authority for the period of 10 years have not taken any steps to acquire the land which is under proposed designation or proposed reservation, then the owner is required to serve notice under Section 127 of the MRTP Act. In the instant case, Section 127 of the MRTP Act will not apply as explained in paragraph nos. 12, 13 and 14 above, as the land is not shown reserved for the public purpose, but on the Development Plan only the existing users of Cinema is indicated which are governed by the Regulation of Town Planning Scheme, 1963 read with DCR, 1967, as the land is covered under CRZ Notification falling in CRZ-II category.”

4. In the light of the above averments it is clear that the section 127 of the MRTP Act has no application in the present case in as much as the land in question was not shown reserved for public purpose. In that view of the matter the reliefs claimed in the petition will not survive.

5. In the above circumstances, the petition is disposed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)