

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.724 OF 2015**

Arvind S. Rane & Ors.

...Petitioners

Versus

Municipal Corporation of Greater,
Mumbai & Ors.

...Respondents

...

Ms Sumedha Rao for the Petitioners.

Mr. Nishant Sasidharan, Mr. Vasim Shaikh, Mr. Kalpesh Mehta i/b. M/s.
Pravin Mehta and Mithi & Co. for Respondent No.4.

Mrs. Geeta Joglekar for BMC

Mr. S.S. Redekar for Respondent No.5

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

DATED : 5th OCTOBER, 2016

P. C. :

Heard the learned counsels appearing for the respective parties.

2. The petition is filed seeking direction to the Respondent No.2 Municipal Corporation to demolish the construction to the extent of 40,000 sq.ft. of building No.2 inside the compound of Petitioner's building.

3. The learned counsel for the Petitioners relied upon the order dated 23rd November, 2007 issued by the State of Maharashtra under section 154 of the M.R.T.P. Act and pointed out that the TDR Potential of the old building No.1 is not allowed to be consumed in building No.2. She has

relied upon the affidavit filed by the Developer in Writ Petition No.2832 of 2005 and submitted that only 16,000 FSI was available to the Developer to construct on a plot adjacent to building No.1.

4. Mr. Arun A. Nadagoudar, Deputy Chief Engineer (Building Proposal) filed an affidavit on behalf of the Municipal Corporation of Greater Mumbai. In para No. (v) of the said affidavit reference is made to the resolution passed by the Respondent No.5- Shivyog Co-op. Housing Society, of which Petitioners are the members. Under this resolution the Respondent No.5-Society gave no objection to allow the Developer to carry out future development on the adjacent plot of building No.1 by using balance potential FSI and TDR and or development under section 33 (14) of DCR after obtaining occupation certificate. The Affidavit further shows that the construction on the plot adjacent to the Petitioners' building is after obtaining prior permission from the competent authority, viz. Respondent No.2.

5. The learned counsel appearing for the Respondent No.5-Society has no objection. He submits that the society has no objection about consumption of potential FSI or TDR of building No.1 by the Developer. Be that as it may, two of the Petitioners are signatories to this resolution, under which no objection given to the Developer.

6. In above circumstances, we do not find any merit in the petition, same is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)