

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

WRIT PETITION (LODGING) NO.550 OF 2016

Havemore Realty Private Ltd.,
Sion, Mumbai & Anr.
V/s.

.... Petitioners

Union of India,
Through the Secretary,
Ministry of Civil Aviation, New Delhi & Ors.

.... Respondents

Mr. Chirag Balsara, a/w. Mr. Abdullah
Lakdawalla, for the Petitioners.

Mr. Chirag Shah for Respondent Nos.1 and 3.

Ms. Shilpa Kapil for Respondent No.2.

Ms. Sneha Mehta, a/w. Mr. Farid Karachiwalla,
i/by M/s. Wadia Ghandy & Co., for
Respondent No.4.

Mr. Jagdish G. Reddy (Aradwad) for
Respondent No.5.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 20TH APRIL, 2016.

P.C. :

1. Heard learned counsel for the respective parties.
2. The Petition is filed to seek a direction to Respondent Nos.1 to 4 to carry out aeronautical survey and take a decision based on the same, without insisting on the structural demolition of 13th and 14th floor of the building constructed by the erstwhile Developer.

3. In the Minutes of the Meeting dated 4th December 2015, copy of which has been annexed to the Petition at Page No.45, as far as the subject plot is concerned, what has been set out is that, there are two floors and which would require demolition so as to meet what has been stipulated for the site as a height restriction. It is stated in the Petition that a Slum Rehabilitation Scheme is being implemented on CTS Nos.78A to 78H of Village Gundavali, situate on Western Express Highway, Andheri (East), K-East Ward, Mumbai. That admeasures about 30,591 square meters. There are approximately 1,785 slum-dwellers. The proposal was approved and the Letter of Intent was issued on 17th March 2006. It is stated that the erstwhile Developer completed construction of one building, admeasuring 14 floors, and two other buildings were also proposed of the same size. The construction was permitted upto the height of 56.27 meters above mean sea level.

4. It is alleged that this restriction on height is not adhered to and the Minutes of the Meeting dated 4th December 2015 record that the construction made by the Petitioners' predecessor is beyond 56.27 meters. That would have to be demolished. The Petitioners' counsel invited our attention to these Minutes.

5. He had, in the morning session, indicated that the Petitioners had performed several acts by which these offending floors are rendered unusable and inhabitable. Therefore, the Petitioners' request to carry out an aeronautical survey immediately, so as not to disrupt the construction at site, be granted.

6. After hearing Mr. Balsara and Ms. Mehta and Ms. Shilpa Kapil, appearing for the respective parties, we were disinclined to grant any such relief. Mr. Balsara, therefore, sought time to take instructions. He has

taken instructions and informed the Court that the Builders and Developers and those in-charge of the construction at site, including the Petitioners, will now remove these floors completely and produce proof of the same before the concerned authorities to show that they can carry out aeronautical survey. However, this process be expedited; else the project will be held up.

7. On instructions, Mr. Balsara states that, within a period of 45 days from today, these two floors would be completely demolished and proof of such demolition would be produced by addressing a letter / intimation to the Mumbai International Airport Ltd. and Airport Authority of India Ltd. The said authorities can come and carry out inspection at site, but they must expedite the process of aeronautical survey.

8. After hearing the counsel on this limited point, we direct that, in the event, the Petitioners comply with their statement made today and carry out demolition and complete it within the period stipulated above, then, the respective authorities shall carry out inspection, on receipt of the intimation of demolition from the Petitioners. The inspection be carried out and completed within two weeks from the date of receipt of such intimation. Thereafter, we would expect these authorities to carry out aeronautical survey latest by eight weeks from the date of inspection. Mr. Balsara states that all reasonable costs for carrying out survey shall be borne by the Petitioners, as they are interested in going ahead with the project. They would also execute necessary agreements and after the site inspection is carried out, the authorities can be rest assured that not only the agreements would be executed, but, even the costs, charges and expenses, which are required to carry out survey, would be deposited with them.

9. Needless to clarify, that when the Petitioners communicate to the Airport Authority of India and Mumbai International Airport Authority that they have carried out demolition, they must also inform the Slum Rehabilitation Authority. The Slum Rehabilitation Authority must depute its representative and verify whether such demolition is carried out at site and prepare a report and duly forward it to Airport Authority of India and Mumbai International Airport Authority.

10. Petition is disposed of with the above directions.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]