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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.45 OF 2013

I.C.Welfare Women's Association
through its Authorised President
Mrs.Yvonne D'Souza ...Petitioner
vs.
The State of Maharashtra & others ...Respondents

Mr.Amarendra Mishra for the Petitioner
Mr.Rajiv Mane, AGP for the respondent Nos.1,3 and 4.
Ms Trupti Puranik for the respondent No.2
Ms Kiran Bagalia for the respondent No.5
Mr.Ram Apte, Senior Counsel i/b Aruna Ghadge for the
respondent No.8
Ms Gayatri Singh, Senior Counsel for the respondent
Nos.9 to 21.

CORAM : A.S.OKA, & P.D.NAIK,JJ.

DATE : APRIL 4, 2016

P.C.:

1 Heard the learned counsel for the petitioner,
the learned AGP for the respondent Nos.1,3 and 4.
We have also heard the learned counsel for the
respondent No.5 and the learned senior counsel for
the respondent No.8. We have also heard the learned
senior counsel for the respondent Nos.9 to 21. The
learned counsel for the petitioner on instructions
states that in this petition, the petitioner is only
pressing the prayer clauses (b) and (c). He states
that the Recreation Ground is shown on the map
annexed at page 52 is not a reservation in the
sanctioned development plan but it is shown as a

Recreation Ground in the sanctioned layout. The learned senior counsel for the respondent No.8 states that the respondent No.8 will not carry on any construction on the Recreation Ground shown in the plan at page 52 unless the said respondent obtains a development permission from the Mumbai Municipal Corporation.

2 We accept the aforesaid statement made by the respondent No.8. Therefore, as of today, the respondent No.8 cannot make any construction or make any development on the said plot shown as Recreation Ground. The issue whether construction can be made on the Recreation Ground or whether the layout can be amended need not be decided at this stage. The learned counsel for the respondent No.8 states that an application made by the respondent No.8 for grant of development permission for carrying out construction on the said Recreation Ground is pending. We accept the said statement.

3 It will be open for the petitioner, the respondent No.5 and respondent Nos.9 to 21 to raise an objection to the pending application made by the respondent No.8 for permission to carry out development. There is some controversy whether any such application made by the respondent No.8 is still pending with the Mumbai Municipal Corporation. We make it clear that if such application made by the respondent No.8 is pending, the same cannot be decided by the Mumbai Municipal Corporation without taking into consideration the objections which may

be raised by the petitioner, the respondent No.5 and the respondent Nos.9 to 21. At this stage, the learned senior counsel for the respondent No.8 on instructions states that the respondent No.8 intends to submit a fresh proposal/application for grant of permission to carry out construction on the Recreation Ground. We accept the said statement.

4 The respondent No.8 will have to give notice of filing such proposal to the petitioner, the respondent No.5 and the respondent Nos.9 to 21. Needless to add that without considering the objections which may be filed by the petitioner and the respondent No.5 as well as the the respondent Nos.9 to 21, the Mumbai Municipal Corporation shall not decide the application which may be made by the respondent No.8. Therefore, at this stage, this petition need not be kept pending.

5 Hence, we dispose of this PIL by passing the following order:

(I) Prayer clauses (d) and (e) are not pressed by the petitioner. However, we make it clear that we have made no adjudication on the legality and validity of the orders which are subject matter of challenge in prayers (d) and (e). If any of the parties to the petition are aggrieved by the said orders, their remedy to challenge the said orders is expressly kept open;

(II) We accept the statement made by the

respondent No.8 through its senior counsel that no construction will be carried out on the plot which is shown as Recreation Ground on the map on page 52 without obtaining prior development permission from the Mumbai Municipal Corporation and/or any other competent Authority. The contention raised by the respondent no.8 that the Recreation Ground shown on the map at page 52 has ceased to be a Recreation Ground is kept open to be decided by the Mumbai Municipal Corporation or the appropriate Competent Authority;

(III) The learned senior counsel for the respondent No.8 states that the respondent No.8 may be permitted to erect fencing and/or tin shed which is allegedly destroyed by the petitioner. We are not going into the issue whether any such act has been done by the petitioner. We make it clear that the respondent No.8 shall not carry out the work of erecting fencing or tin shed without obtaining development permission from the Mumbai Municipal Corporation;

(IV) As and when such application is made by the respondent No.8 to the Mumbai Municipal Corporation for grant of development permission to develop the said plot including the work of erecting fencing or construction of a tin shed on the said plot, a notice of the said application shall be given by the respondent No.8 to the petitioner and the respondent No.5 as well as the respondent Nos.9 to 21 who shall

be entitled to raise an objection in writing to the Mumbai Municipal Corporation within a period of three weeks from the date on which intimation of filing of such application is received by them;

(V) We make it clear that the Mumbai Municipal Corporation shall not deal with the application which may be made by the respondent No.8 without satisfying itself that a notice of the said application as directed above is served by the respondent No.8 to the petitioner, the respondent No.5 and the respondent Nos.9 to 21. Needless to add that the objections, if any, raised by the said parties shall be considered by the Mumbai Municipal Corporation before deciding the application which may be made by the respondent No.8 for development permission on merits;

(VI) The order passed by the Mumbai Municipal Corporation on the application which may be made by the respondent No.8 shall be communicated to the petitioner and the respondent No.5 as well as the respondent Nos.9 to 21. If a permission is granted by the Mumbai Municipal Corporation to carry out development of any nature, such permission shall not be acted upon by the respondent No.8 for a period of three weeks from the date on which a communication recording grant of such permission is served to the petitioner, the respondent No.5 and the respondent Nos.9 to 21;

(VII) All contentions raised by the parties to

the petition on merits of the controversy are
expressly kept open;

(VIII) The Petition is disposed of on above terms.

(P.D.NAIK, J.)

(A.S.OKA, J.)