

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.47 OF 2010**

Santosh Daundkar,
10/37, B.I.T.Chawal,
Keshavrao Kadam Marg,
Mumbai-400 008.

.. Petitioner.

Vs

1. State of Maharashtra
through the Principal Secretary,
Department of Urban Development;
Mantralaya, Mumbai.
2. Commissioner,
Municipal Corporation of Greater Mumbai
D.N.Road, Mumbai.
3. Chief Engineer,
(Development Plan)
Member Secretary,
High Rise Committee,
Annexe Building,
Municipal Corp. of Gr. Mumbai,
Mumbai-01.
4. Commissioner,
Mumbai Metropolitan Regional Authority
Bandra kurla Complex, Mumbai.
5. Member Secretary,
Maharashtra Coastal Zone Management
Authority,
New Administrative Building, Opp.
Mantralaya, Mumbai.
6. Collector, Mumbai City,
Old Custom House, Mumbai.
7. Adarsh Co-operative Housing Society,
CTS No.652, Block (VI), Colaba Division,
Capt. Prakash Pethe Marg, Colaba,
Mumbai.

8. Team One Architects (I) Pvt Ltd;
Plot No.7, Shivaji Fort Society,
Duncan Causeway, Sion (E),
Mumbai.
9. Shri Jayraj Pathak, through
the Municipal Commissioner,
Municipal Corporation of Gr. Mumbai
Mumbai.

Respondents.

Mr. Aditya Pratap i/b K.P.Bhalerao, Advocate for Petitioner.

Mr. Shailesh Shah, Senior Advocate a/w B.H.Mehta, A.G.P, for
Respondents no.1 and 6-State.

None for Respondents no. 2, 3, 8.

Ms Kiran Bagalia, Advocate for Respondent no.4-MMRDA.

Mr.D.J.Khambata, Senior Advocate a/w Ms. S.U.Deshmukh,
Advocate for Respondent no.5 (MCZM).

Mr. Navroz Seervai, Senior Advocate, a/w S/Shri Manish Desai,
Saket Mone, Vishesh Kalra, S. Chakraborty i/b Vidhi Partners
Advocates for Respondent no.7-Adarsh Society.

Mr. R.S.Apte, Senior Advocate i/b N.R.Bubna, Advocate for
Respondent no.9.

CORAM : **RANJIT MORE & R.G.KETKAR,JJ.**
Reserved on : **02/12/2015**
Pronounced on : **29/04/2016.**

PC : (PER R.G.KETKAR,J.)

1. By an Administrative Order dated 25.8.2015 passed by the Honourable Chief Justice, this Special Bench was reconstituted for hearing of the above petition and other connected matters from the Division Benches available at Original/Appellate Side of this Court. In pursuance thereof, we have heard Mr. Aditya Pratap,

learned counsel for the petitioner, Mr. Shailesh Shah, learned Senior Counsel for respondents no. 1 and 6, Ms Kiran Bagalia, learned counsel for Respondent no.4, Mr. D.J.Khambata, learned Senior Counsel for Respondent no.5 and Mr. Navroz Seervai, learned Senior Counsel for Respondent no.7-Adarsh Society and Mr. R.S.Apte, learned senior counsel for respondent no.9, at length. At the request and by consent of the parties, the petition is taken up for final hearing.

2. This petition in the nature of public interest is instituted by Santosh Daundkar under Article 226 of the Constitution of India against respondent no.1-State of Maharashtra, respondent no.2-Municipal Commissioner, Municipal Corporation of Greater Mumbai (for short, 'Corporation'), respondent no.3-Chief Engineer (Development Plan), Member Secretary High Rise Committee, respondent no.4- Commissioner, Mumbai Metropolitan Regional Development Authority (for short, 'MMRDA'), respondent no.5-Member Secretary, Maharashtra Coastal Zone Management Authority, (for short, 'MCZMA'), respondent no.6-Collector, Mumbai City, respondent no.7-Adarsh Co-operative Housing Society (for short, 'Adarsh Society'), respondent no.8- Team One Architect (I) Pvt Ltd, respondent no.9- Dr. Jairaj Pathak.

3. By this petition, the petitioner has, inter-alia, prayed for declaration that the order dated 20.7.2004 passed by High Rise Committee is inconsistent with the law and the same be quashed

and set aside; the approval granted to Adarsh Co-operative Housing Society for constructing upto height of 104.60 meters be quashed and set aside and the same be brought strictly in terms of provision of Rule 9 of Development Control Rules, 1967 (DCR) so as to bring down the height of the building to 30 meters; respondent no.1-State of Maharashtra be directed to take administrative action against respondent no.8- Dr. Jairaj Pathak, the then Municipal Commissioner for transgressing his statutory powers and giving a statutory approval for a height of 104.60 meters when the law stipulated granting of approval only upto 30 meters so as to occurred favour to a society where his own son is a member and in getting a flat in building on Government land at a price which is just 5% of the market price of 7.5 crores in posh Cuff Parade area; for direction to Maharashtra State Anti Corruption Bureau to register a case of criminal misconduct under section 13(1)(d) of the Prevention of Corruption Act,1988 against respondent no.8 with reference to acts, omissions and commissions specified in prayer clause (c), among other reliefs.

4. We are not inclined to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India as purpose in filing this petition is achieved in view of the following directions issued by us while disposing of Writ Petition No. 369 of 2011.

“We, therefore, direct-

(1) respondent No.1 - Union of India, Ministry of Environment and Forests to forthwith demolish Adarsh building constructed by the petitioners at the expenses of the petitioners;

(2) Respondent no.1-Union of India and Respondent No.7-State of Maharashtra to consider initiating appropriate civil / criminal proceedings against the concerned bureaucrats, ministers and politicians in accordance with law, if not already done for committing various offences in acquiring the subject plot as also misuse and / or abuse of powers. The concerned Court/s shall decide the case/s on the basis of evidence on record and in accordance with law, uninfluenced by the observations made / findings recorded herein;

(3) respondents No.1 and 7 to consider initiating departmental proceedings in accordance with law against the bureaucrats. The disciplinary authority/ies shall take the decision in accordance with law without being influenced by the observations made / findings recorded herein;

(4) respondent No.7 - State of Maharashtra to resume CTS No.652, Block VI, Colaba Division, Captain Prakash Pethe Marg, adjacent to Backbay Bus Depot, Colaba, Mumbai - 400 005 by following due process of law. Let that action be taken within a period of four weeks from today;

(5) petitioners to pay cost of Rs.1,00,000/- each to respondents No.3 and 4 and Dr. A. Senthil Vel, Mr. Thirunavukarasu, Mr.T. C. Benjamin and Mr. Sitaram Kunte.”

5. By direction no.1, we have directed Union of India, Ministry of Environment and Forests to forthwith demolish Adarsh Building

constructed by the Adarsh Society. By direction no.2, we have directed Union of India and State of Maharashtra to consider initiating civil/criminal proceedings against the bureaucrats and Ministers and all concerned politicians for committing various offences in acquiring subject plot as also for misuse and/or abuse of powers in accordance with law. By direction no.3, we have directed State of Maharashtra and Union of India to consider initiating departmental proceedings in accordance with law against bureaucrats. Respondent No.9-Dr. Jairaj Pathak is one of such officers.

6. Apart from this, the petitioner has not impleaded other members of High rise Committee. In the case of *All India State Bank Officers' Federation Vs. Union of India*, (1997) 9 SCC 151 in paragraph 21, it is observed that for an allegation of mala fide to succeed it must be conclusively shown that respondents 4 and 5 wielded influence over all the members of the Board who were present in the said meeting. No such allegation has been made. In paragraph 22, it was further held that neither the Chairman nor the Directors, who were present in the said meeting, were impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.

7. In the present case, the petitioner has not impleaded other members of High Rise committee. For an allegation of mala fide

to succeed, it must be conclusively shown that respondents no.9 wielded influence over all the members of High Rise Committee. No such allegation has been made. The petitioner has also not impleaded other members of High Rise Committee.

8. In view of the decisions of the Apex Court in All India State Bank Officers' Federation (supra), we do not find it appropriate to grant any relief in this Petition. In view thereof, Petition fails and the same is dismissed.

(R.G.Ketkar,J.)

(Ranjit More,J.)