

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

WRIT PETITION NO. 947 OF 2013

Hanmant Tayaba Jagdale and Others. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Altaf Khan, Mr. Nitesh Acharya i/b Anjali Awathi for the
Petitioners.

Ms. Uma Parsule-Desai, AGP for the State.

Mr. G. D. Utangale and Mr. Chetan Mhatre i/b Utangale & Co., for
Respondent No. 4.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **June 22, 2016.**

P. C. :

1. Heard. Petition is filed for following reliefs:

"[A] That this Hon'ble Court exercising powers under Article 226 of the Constitution of India, 1950 may be pleased to issue Writ of Mandamus or any other appropriate Writ or Order directing the State Government and the SRA to immediately prepare a General Slum Rehabilitation Scheme for Greater Mumbai Area u/s 3B of the Slum Act, 1971 for the purpose of increasing FSI greater than 2.5, carpet area of rehab flats greater than 225 sq. fts. And increasing Rs.20,000/- deposit amount prior to modification in Regulation No. 33(10) u/s 37(1-B) of the MRTP Act, by the SRA and u/s 37(2) of the MRTP Act by the State Government.

[A-1] That, this Hon'ble Court be pleased to issue writ of certiorari and or any other appropriate writ, order exercising powers under Article 226 of the Constitution of India, 1950 holding the direction clause [D] of the impugned Government Order dtd. 16.04.2008 as illegal, null, void and this Hon'ble Court be pleased to quash and set it aside."

2. Thus, by prayer clause [A], the Petitioner has sought direction to the State Government to increase the FSI and area of rehabilitation tenement. By prayer clause [A-1], the Petitioner has sought quashing of the Government Order dated 16th April 2008 by which the State Government has directed the SRA to carry out modification in the DCR 33(10) for increasing the FSI from 2.5 to 3.00 and carpet area of residential tenement from 225 sq. ft. to 269 sq. ft. The said modifications were brought into effect with prior sanction of the State Government under section 37(1) of MRTP Act.

3. By this petition, invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner is seeking a direction to increase the area of rehabilitation tenement from 269 sq. ft to 300 sq. ft. It is the contention of the Petitioner that area of 300 sq. ft. is made available to the eligible persons under the scheme formulated under DCR 33(5) and on the lines of said scheme, area of 300 sq. ft. be directed to be incorporated in a scheme under DCR 33(10).

4. In short, the Petitioner wants this Court to legislate, which is not permissible. The relief of the nature claimed in this writ petition cannot be granted under Article 226 of the Constitution of India. We are therefore not inclined to entertain the writ petition and the same is accordingly dismissed.

5. In view of the disposal of main Writ Petition, chamber summons and notices of motion, if any, taken out in this writ petition, do not survive and the same are accordingly disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]