

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

**WRIT PETITION NO. 1232 OF 2013**

Ibrahim Dawoodbhai Jathera  
and Others.

..Petitioners.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. A. V. Anturkar, Senior Advocate with Mr. Altaf Khan, Nitesh Acharya and S. U. Pandey for the Petitioner.

Mr. A. D. Patel and Ms. Uma palsule Desai AGP for the State.

Mr. Chetan Mhatre i/b Utangale & Co., for Respondent No.6.

Mr. P.K. Dhakephalkar, Senior Advocate with Saket Mone, Vishesh Kalra, Subit Chakraborti i/b VIDHI Partners for Respondent No.8 and 9.

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

Date : **October 7, 2016.**

P. C. :

1. Mr. Anturkar, the learned Senior Counsel appearing for the Petitioners at the outset tenders draft of further amendment. Mr. Dhakephalkar, the learned Senior Counsel appearing for Respondent Nos.8 and 9 has no serious objection to the proposed amendments. Since the petition is at admission stage, the Petitioner is permitted to amend petition in terms of the draft of amendment. Necessary amendments be carried out forthwith.

2. Heard Mr. Anturkar, the learned Senior Counsel appearing for the Petitioners and Mr. Dhakephalkar, the learned Senior Counsel appearing for Respondent Nos. 8 and 9. The

Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India to challenge the Letters of Intent dated 29<sup>th</sup> July 2002 and 28<sup>th</sup> December 2002 issued by the SRA. By the said Letters of Intent, the scheme of Respondent No. 8 and 9 under DCR 33(10) came to be sanctioned.

3. Earlier, the Petitioners had challenged the LoI dated 29<sup>th</sup> July 2002 by filing three writ petitions, namely, Writ Petition No. 806 of 2006, 3035 of 2006 and 2742 of 2008. By the separate orders passed in these petitions respectively on 17<sup>th</sup> April 2006, 23<sup>rd</sup> August 2006 and 8<sup>th</sup> April 2009 these petitions came to be dismissed. The order dated 8<sup>th</sup> April 2009 passed in Writ Petition No.2742 of 2008 was challenged before the Supreme Court by filing SLP. However, the same was dismissed.

4. In the present writ petition, the Petitioners are challenging the Letter of Intent dated 28<sup>th</sup> December 2004 mainly on the ground that by virtue of the notification dated 7<sup>th</sup> July 2004, Respondent Nos. 8 and 9 are required to take prior clearance from the Environment Department. It is not disputed that the Petitioner challenged the entire scheme under DCR 33(10) before the National Green Tribunal on the ground that there was no clearance from the Environment Department. The challenge of the Petitioners was

rejected by the NGT. The Petitioners thereafter approached the supreme Court, however, they were unsuccessful.

5. Be that as it may, the petitions referred to above were filed subsequent to the notification dated 7<sup>th</sup> July 2004. The Petitioners did not raise such challenge in those writ petitions. The Petitioners having failed to raise such challenge and having not been successful before the Supreme Court, cannot now raise the challenge on the same ground.

6. Mr. Anturkar, the learned Senior Counsel appearing for the Petitioners also challenged the subject LoI on the ground that Respondent Nos.8 and 9 are not the owners of the subject land and therefore not entitled to develop the same under DCR 33(10) scheme. In short, the Petitioners are challenging title of Respondent No. 8 and 9. The issue of title cannot be gone into in a writ petition under Article 226 of the Constitution of India.

7. In the backdrop of above discussion, we are not inclined to entertain the writ petition and the same is therefore dismissed.

**[SMT. ANUJA PRABHUDESSAI, J.]**

**[RANJIT MORE, J.]**