

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

WRIT PETITION (L) NO. 2448 OF 2016

The Associated Journals Ltd. & Anr.

..Petitioners

v/s.

Municipal Corporation of Gr.Mumbai
& Ors.

..Respondents

Mr. Darius J.Khambata, Sr. Counsel a/w. Sr. Counsel Mr. Mustafa Doctor, Mr. Aditya Mehta, Mr. Rakesh Mandavkar, Mr. Dhaval Shethia i/b. Mr.Bhaves V. Panjwani Partner of M/s. Mulla & Mulla & Cragie Blunt & Caroe for the Petitioner.

Mr.A.Y.Sakhare, Sr. Advocate a/w. Mrs. Pallavi Thakur for the BMC.
Mr.A.L.Patki, AGP for the State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : OCTOBER 27, 2016.**

P.C.

1. Heard Mr. Khambata, learned Senior Counsel for the petitioners. Mr. Sakhare, learned Senior for the respondent no.1 Corporation, and Mr. Patki, AGP for the State.

2. The petition is filed for the following reliefs:

(a) that this Hon'ble Court be pleased to issue a writ of

mandamus or any other appropriate writ, direction or order in the nature of mandamus directing the respondents and their respective officers, servants and agents to forthwith grant approval in respect of the petitioner's application dated 12th January, 2016 for the transfer and utilization of TDR to the petitioner and approval of the amended building plans by utilization of the TDR and to thereafter issue the appropriate Commencement Certificate(s);

(b) alternatively, that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order in the nature of mandamus directing the respondents and their respective officers, servants and agents to forthwith process and decide the petitioner's application dated 12th January, 2016 for the transfer and utilization of TDR to the petitioner and approval of the amended building plans by utilization of the TDR;

(c) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order in the nature of mandamus directing respondent no.4 to grant the petitioner an extension of the date by which the building is to be constructed and the land utilized for the proposed purposes permissible under law, including publication of newspapers and

establishing a Nehru- Library-cum-Research Institute;”

3. So far as the relief claimed in prayer clauses (a) and (b) are concerned, it was the grievance of learned Sr. Counsel Mr.Khambata that despite the fact that the petitioner through its Architect's letter dated 12.1.2016 submitted amended plans complying the requirements, those plans are not processed by the respondent no.1 Corporation.

4. On 6th October, 2016, having heard Mr. Sakhare, learned Sr. Counsel for the Corporation, we found that there is no justification for the respondent nos.1 to 3 not processing the plans, and therefore by order dated 6th October, 2016 we directed the respondent nos.1 to 3 to forthwith process the said application dated 12.1.2016. The matter was thereafter placed for orders on 25.10.2016. In pursuance of the said order dated 6.10.2016, the petitioner's proposal was processed.

5. Mr. Sakhare, learned Senior Counsel for the Corporation submitted that all the requirements are complied with by the petitioner and the Corporation raised demand raised on 26.10.2016

for payment of scrutiny fee, IOD deposit, debris deposit, development charges, staircase premium, labour welfare charges and premium for open space deficiency. On this statement of Mr. Sakhare, we deferred the hearing on behalf of the petitioner. Same was adjourned to today.

6. Mr. Sakhare, learned Sr. Counsel for the petitioner submitted that the Corporation has already calculated the amount towards various charges and directed the petitioner to deposit the amount of Rs.6,67,41,100/-. Mr. Khambata, learned Sr. Counsel, submits that the amount has already been deposited with the Corporation. Mr. Sakhare, learned Counsel for the petitioner states that in view of the payment of amount, now the development permission would be granted in pursuance of the applications dated 12.1.2016 and 24.10.2016, within the period of one week from today. Statement accepted. In that view of the matter, prayer clauses (a) and (b) are worked out.

7. So far as the relief claimed in prayer clause (c) is concerned, Mr. Khambata, learned Sr. Counsel submits that by letter dated 25.8.2014 the respondent no.4 State Government

has extended the time to complete the construction upto 21.12.2016. He submits that the construction could not be completed within the stipulated time due to the non co-operation of the respondent nos.1 to 3. He also submits that had the respondent nos.1 to 3 processed the petitioners proposal in the month of January 2016 the construction would have been completed within the stipulated time. Mr. Khambata, learned Sr. Counsel submitted that by this time the petitioner has incurred huge expenditure, approximately of Rs.76 crores. He states that the time limit granted by the Government may be further extended for the period of fifteen months from the date of approval of the amended plan. Mr. Patki, learned AGP for the State submits that the petitioner may be directed to apply to the State Government and thereafter appropriate decision would be taken.

8. Having perused the record, we are satisfied that the petitioner is not responsible for delay in completion of the construction within the stipulated period. The delay is wholly attributable to the failure of the respondent nos.1 to 3 to process the petitioners application for approval of the amended plan. The petitioner could not have completed the construction without the approval of the said amended

plan. Considering this fact and considering the conduct of the respondent nos.1 to 3, we are not inclined to revert the petitioner to the State Government as the same would result in further delaying the completion of the construction and would cause further loss and hardship to the petitioner. Therefore, in the interest of justice, we extend the time for completion of the construction by the petitioner on the subject plot, by fifteen months, from the date of grant of approval of the amended plan by the respondent nos.1 to 3.

9. The writ petition is accordingly allowed in terms of prayer clause (c).

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)