

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2992 OF 2014**

Sherin F. Jasdenwvalla

.. Petitioner

versus

The Municipal Corporation of
Greater Mumbai & Ors.

.. Respondents

Mr. Y. H. Muchhala – Senior Advocate with S. A. Khan and Sharique
N. i/b. Judicare Law Associates for Petitioner.

Mr. H. C. Pimpale - for Respondent No. 1.

Ms Geeta Shastri – Addl. G. P. for Respondent No. 2.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 04 OCTOBER 2016

P.C.:

1] The present writ petition came to be filed challenging communication dated 27 August 2014 wherein the proposed residential hotel building plan submitted by the writ petitioner through his architect came to be rejected on the ground of Regulation 69 of DCR of 1991. The main contention of the writ petitioner is that on the expiry of the lease entered into between the landlord and the lessee i.e. Esso – Hindustan Petroleum Corporation Limited, they were entitled for possession of the property and litigation was fought upto the Supreme Court and finally in terms of the directions of the Apex Court and also the undertaking given by the lessee (Esso), ultimately possession of the property came to be handed over to the writ petitioner on 14th August 2014 and therefore according to the petitioner the ground on which the plan came to be rejected was incorrect and since there is no justification, the petitioner sought for

quashing of Exhibit 'I' at page 101. So far as Regulation 69 of DCR of 1991, it reads as under :

'Notwithstanding anything contained in these regulations, in the redevelopment of sites of existing filling and service station of Petrol, Diesel compressed Natural Gas or any other Motor vehicle fuel, change of user shall not be permitted.'

2] The reference to redevelopment of sites and the restrictions therein is with regard to existing filling and service station of petrol, diesel, compressed natural gas, etc.

3] As on the date of passing the impugned order rejecting the plan of the writ petitioner, virtually there was no existence of filling and service station of petrol, diesel compressed natural gas as indicated in Regulation 69.

4] In that view of the matter, there was no justification for the respondent authorities to reject the plan submitted by quoting Regulation 69 of DCR of 1991. Therefore, we are of the opinion that the writ petition has to be allowed by setting aside Exhibit 'I' dated 27th August 2014 at page 101 of the writ papers.

5] So far as reconsideration of the plan already submitted, we are informed that in the month of May 2016, a Draft Development Plan about entire Metropolitan City of Bombay is prepared and even published calling for objections in order to finalise the draft plan. It is also brought to our notice that prior to preparation of draft plan indicating and demarcating the user of the lands in the City of Bombay, objections were called for and the writ petitioner did submit objections before the draft plan was published. In the light of such submission of

objections, the plan submitted by the writ petitioner in the year 2014 has to be considered taking into consideration all the relevant facts including objections raised and so also the law relied upon by learned counsel for the writ petitioner in the case of ***S. N. Rao & Ors. vs. State of Maharashtra & Ors. [1988 (1) SCC 586]***. The consideration of the approval of the plan submitted in 2014 must be completed after hearing the writ petitioner, within two months from the date of receipt of copy of this order.

6] Accordingly, writ petition is disposed of by quashing the order dated 27th August 2014 and directing the respondent authorities to reconsider the plan submitted by the writ petitioner within two months from the date of receipt of a copy of this order, in the light of observations mentioned above.

CHIEF JUSTICE

(M. S. SONAK, J.)

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