

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2112 OF 2016

Riddhi Siddhi Commercial Premises,
Malad (W), Mumbai. ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr. P.J. Thorat for the Petitioner.

Mr. Pradeep M. Patil for Respondent Nos.1 to 3-Municipal Corporation.

Mr. Parag Nikale, Officer SE(BP) of Respondent-Municipal Corporation
is present in Court.

Ms. R.A. Salunkhe, A.G.P., for the Respondent-State.

CORAM : NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 18TH APRIL 2017.

P.C. :

1. Rule made returnable forthwith. Heard learned counsels for the respective parties.
2. Petitioner had earlier filed a Writ Petition bearing No.10187 of 2013, challenging the communication dated 29th November 2014 issued by the Deputy Chief Engineer (B.P.) WSII of the Respondent-Municipal Corporation on the proposal submitted by the Petitioner for regularization of structure on the plot reserved for '*5% Amenity Space of the Layout*', bearing CTS No.1406/6, situated at Village Malad (South), Taluka Borivali, Off Link Road, Malad (West), Mumbai.

3. The subject matter was remanded back to the Respondent-Municipal Corporation for giving hearing to the Petitioner. Thereafter, upon hearing the Petitioner and necessary parties, the Deputy Chief Engineer (Building Proposal), Western Suburbs-II, of the Respondent-Municipal Corporation passed order on 4th November 2015 and communicated the same to the Petitioner vide its letter dated 13th January 2016.

4. Mr. Thorat, learned counsel appearing for the Petitioner, submits that the order dated 4th November 2015 is an unreasoned order, does not reflect application of mind by the Deputy Chief Engineer (Building Proposal), Western Suburbs-II, of the Respondent-Municipal Corporation.

5. Mr. Patil, learned counsel appearing for the Respondent-Municipal Corporation, submits that the concerned Designated Authority had heard all the necessary parties. Out of 14 plot-holders, 10 plot-holders had given consent for allowing development of '5% *Amenity Space of the Layout*', but, other plot-holders did not give such consent for modification of the Layout Plan.

6. Learned counsel appearing for the Petitioner submits that, at least, this remark is not reflected in the impugned order.

7. While dealing with this issue, the Division Bench of this Court, *[Coram : A.S. Oka & Revati Mohite-Dere, JJ.]*, has observed in paragraph No.2 of the order passed on 21st July 2015 as under :-

“(ii) We direct the first Respondent to reconsider the proposal submitted by the Petitioner for modification of the sanctioned lay-out after issuing notice to all the plot-holders of the plots in the lay-out and after giving an opportunity of being heard to all of them.”

8. Without expressing any opinion on the same, we find that the matter is again required to be remanded back to the concerned Designated Authority of the Respondent-Municipal Corporation.

9. The concerned Designated Authority of the Respondent-Municipal Corporation must be conscious of the fact that, if the High Court had remanded back the matter earlier, the concerned Designated Authority ought to have passed a brief reasoned order reflecting application of mind. The order must be clear and it must reflect what were the reasons for rejecting proposal of the Petitioner. The impugned

order lacks this clarity. Therefore, we are constrained to again remand the matter back to the concerned Designated Authority of the Respondent-Municipal Corporation by passing following order :-

“O R D E R”

- (A) The impugned order dated 13th January 2016, passed by the Deputy Chief Engineer (Building Proposals), Western Suburbs-II, of the Respondent-Municipal Corporation, rejecting the proposal submitted by the Petitioner for modification of the sanctioned Lay-Out of land bearing Survey No.504(Part), CTS No.1406/6, situated at Village Malad, Mumbai, is quashed and set aside.
- (B) The matter is remanded back to the concerned Designated Authority of the Respondent-Municipal Corporation for passing brief reasoned order.
- (C) The concerned Designated Authority of the Respondent-Municipal Corporation is free to hear all the necessary parties, if found necessary.

- (D) It is clarified that, we have not expressed any opinion on the merits of the matter.
- (E) The concerned Designated Authority of the Respondent-Municipal Corporation shall pass brief reasoned order in the subject matter within a period of eight weeks from today.
- (F) All issues on merits are kept open.
- (G) In case it is noticed on the next occasion that the order passed by the concerned Designated Authority of the Respondent-Municipal Corporation lacks reasoning, then, this Court would be constrained to impose costs on the Respondent-Municipal Corporation.
- (H) Parties to maintain status-quo as on today till the order is communicated to the parties.

10. Rule made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]