

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

WRIT PETITION NO. 2787 OF 2014

Samudra Mahal Premises Co-operative
Society Ltd.

.... Petitioner

Vs.

Maharashtra Coastal Zone Management
and others

.... Respondents

Mr. Karl Tamboly a/w Mr. A. Y. Shankar, Mr. Arun P. i/b P. Y. Shankar for the petitioner

Ms. Jaya Bagwe i/b Ms. Sharmila Deshmukh for respondent no. 1.

Mr. Milind Sathe, senior advocate a/w Mr. Parimal Shroff i/b Bharat R. Zaveri for respondent no. 6.

Ms. Uma Palsuledesai, AGP for respondent no. 7.

Mr. A. Y. Sakhare, senior advocate a/w Ms. Vandana Mahadik, Ms. Kejali Mastakar for MCGM.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : OCTOBER 30, 2017.

P.C.

By this writ petition, the petitioner has challenged the commencement certificate issued in favour of the respondent no. 6, dated 03/05/2011 as also the no objection certificates (N.O.C.) dated 17/06/2006 and 26/04/2013. The petitioner has additionally challenged the intimation of disapproval dated 27/09/2010 and the occupation certificate in respect of the building constructed by the respondent no. 6.

The building of the petitioner co-operative society is located on the plot

that is adjacent to the plot on which the respondent no. 6 has constructed a building. The petitioner claims that respondent no. 6-M/s. Aryaman Properties and Investments Private Limited has constructed a multi-storied building that affects the easementary rights of the members of the petitioner society, to air and light. According to the petitioner, the Corporation has illegally granted the impugned N.O.C. and commencement certificate to the respondent no. 6 without considering regulations 23 and 31 (4) of the Development Control Regulations for Greater Mumbai, 1991 (hereinafter referred to as 'D.C.R.' for the sake of brevity). According to the petitioner society, though the respondent no. 6 was required to provide open space to the extent of 20% of the area of the plot, the open space to the extent of 20% is not provided. According to the petitioner society, since the building constructed by the respondent no. 6 is situated in the area surrounding the Nehru Centre Complex, the height of the building could not have exceeded 18.3 meters from the ground level. It is the case of the petitioner that in violation of D.C.R. 31 (4), the height of the building constructed by the respondent no. 6 is extended to 24 meters.

The learned counsel for the petitioner took this court through D.C.R. 23 and 31 (4) to point out that the Corporation was not justified in granting the commencement certificate and sanctioning the building plan submitted by the respondent no. 6. It is stated by placing reliance on D.C.R. 23 (1) (a) that at least 20% of the plot of land should have been ear marked for the open space. It is submitted that the height of the building constructed by the respondent no. 6 could not have extended beyond 18.3 meters from the ground level as the building is located near the Nehru Centre Complex. It is submitted that permission could not have been granted by the Corporation to the respondent no. 6 to construct a building, exceeding 18.3 meters in height. It is stated that the construction of the building had commenced in the year 2012 and after securing some information under the Right to Information Act, 2005, the writ

petition is filed in the year 2014.

Mr. Sathe, the learned senior counsel appearing for the respondent no. 6 raises a preliminary objection to the tenability of the writ petition. It is submitted that the petitioner has not pointed out as to how the petitioner society would have a locus to file the writ petition. It is submitted that the writ petition suffers from latches, in as much as the plans were sanctioned by the Heritage Committee on 18/05/2006, the I.O.D. was received on 27/09/2010 and the construction of the building commenced immediately after the I.O.D. was secured in September 2010. It is submitted that even on merits, the petitioner cannot effectively challenge the grant of building permission in favour of the respondent no. 6. It is submitted that D.C.R. 23 would apply only to vacant lands and on the plot on which the respondent no. 6 has constructed the building after securing the necessary permissions, two buildings constructed prior to 1940 were in existence. It is stated that the plot on which the building was constructed was not vacant. It is submitted that D.C.R. 31 (4) would also not apply to the case in hand as 31 (4) would apply only when the construction of the building is on the eastern side of Dr. Annie Besant Road, in the area surrounding Nehru Centre Complex. It is submitted that the building constructed by the respondent no. 6 is on the western side of Dr. Annie Besant Road and not to the eastern side of the said road to which the provisions of D.C.R. 31 (4) would apply. Reliance is placed on the judgment reported in **2014 (4) S.C.C. 538** to submit that D.C.R. 23 (1) (a) would apply only to the lay out or sub-division of “vacant land”. In the circumstances of the case, the learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a reading of D.C.R. 23 and 31 (4) it appears that the writ petition is liable to be dismissed for more reasons than one. The petitioner society claims to be the adjoining owner. The

plans for the construction of the building to which the petitioner has taken an exception were sanctioned on 18/05/2006 and the I.O.D. was secured on 27/09/2010. According to the respondent no. 6, the construction of the said building began in the year 2010. The writ petition is filed in the year 2014. The petitioner has not pointed out as to how the petitioner would have a locus standi to challenge the permission and N.O.C. granted in favour of the respondent no. 6. The submission made on behalf of the petitioner that the easementary right of the petitioner to light, air etc. would be affected in view of the construction of the high rise building with a height of 24 meters cannot be accepted while deciding a writ petition. To prove the easementary right, the petitioner would be required to tender evidence in appropriate proceedings in the civil court. The petitioner has also not explained the delay in approaching this Court as the construction was commenced by the respondent no. 6, on the concerned plot in 2010.

As rightly submitted on behalf of the respondent no. 6, D.C.R. 23 would not apply to the case in hand. The respondent no. 6 has made construction on the plot of land on which 2 buildings were in existence since 1940. It is held by the Hon'ble Supreme Court in the judgment reported in **2014 (4) S.C.C. 538** that D.C.R. 23 would apply to a lay out or sub-division of "vacant land" in a residential or commercial zone. It appears from the note prepared by the Corporation to the proposal submitted by the petitioner that in case, in future, a proposal for redevelopment of the remaining property of the owner on which the two old buildings are standing is tendered, the F.S.I. as required by D.C.R. 23 could be insisted upon. Since D.C.R. 23 would apply to the lay out or sub-division of "vacant land" and since the land on which the construction is made by the respondent no. 6 was not vacant when D.C.R. regulations of 1991 came into force, D.C.R. 23 would not apply to the case in hand. D.C.R. 31 (4) would also not apply to the building constructed by the respondent no. 6.

D.C.R. 31 (4) (a) reads thus:

“31. Height of Buildings-

(1)

(2)

(3)

(4) Additional height and other restrictions in certain areas

(a) In areas around the Nehru Centre:- Notwithstanding anything contained in these Regulations, the height of any building proposed for erection, re-erection or development in the area surrounding the Nehru Centre Complex bounded on the South and East by Keshavrao Khadye Marg (Clerk Road), from the east side of Haji Ali Junction, on the north-east by Dr. E. Moses Road (extended to the north east of the Race Course) (upto the east side of Dr. Annie Besant Road meeting its junction upto Haji Ali), shall not exceed a height of 18.3 m. above the average surrounding ground level”.

It is apparent from a reading of D.C.R. 31 (4) (a) that in areas around Nehru Centre Complex, specially to the eastern side of Dr. Annie Besant road, the height of the buildings shall not exceed 18.3 meters from the ground level. On a perusal of the concerned lay out plan, it appears that the building constructed by the respondent no. 6 is not on the eastern side of Dr. Annie Besant road and is on the other side and away from the Nehru Centre Complex. Since D.C.R. 31 (4) (a) would not apply to the case in hand, the ground raised by the petitioner for challenging the permissions on the basis of D.C.R. 31 (4) (a) should also fail.

Since there is no merit in both the submissions made by the counsel for the petitioner for seeking the prayers made in the writ petition, we dismiss the writ petition with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]