

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1318 OF 2014

Videocon Tower A Co-operative
Housing Society Ltd.

.. Petitioner

Vs

Municipal Corporation of Greater Mumbai
and Others.

.. Respondents

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Ms.Sumedha Rao for the Petitioner.

Shri S.S. Pakale along with Ms.Geeta Joglekar for the Respondent Nos.1 and 2.

Ms.Uma Palsule Desai, AGP for the Respondent Nos.3 to 5.

Shri Shailesh Rajda i/b DSR Associates for the Respondent No.6.

Shri Chinmay Acharya i/b Ms.K.R.Kamdar for the Respondent No.7.

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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 24TH JULY 2017

PC.

1. The learned counsel appearing for the Petitioner states that the Petitioner is pressing Prayer Clauses (a), (d), (e) and (g), which read thus:

“(a) The Hon'ble Court be pleased to declare Regulation 23 of Development Control Regulation 1991 as arbitrary, ultravires the provisions of Article 21 of Constitution of India and in excess of provisions of BMC Act 1888 with respect to sanctioning and construction in a layout.

(d) The Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, Writ or Direction

in the nature of Mandamus, against Respondent No.2, directing him to prepare a statement of actual No. of flats, the area of Recreational Garden area and compulsory open area actually at site.

- (e) The Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, Writ or Direction in the nature of Mandamus, against Respondent No.2 restraining him from amending or altering in any way the layout in which Petitioner's building stands save and except the construction of four floor parking building.
- (g) Pending the hearing and final disposal of the Writ Petition, the Hon'ble Court be pleased to direct Respondent Nos.6 & 7, to forthwith remove the temporary barrier and the supporting cement dividers between the Petitioner's building and RG area.”

2. As far as prayer clause (a) is concerned, the Petitioner is relying upon the averments made in Paragraph 16 of the Petition. She submits that considering the fact that the Recreational Ground to be developed as prescribed by Regulation 23 which was originally meant for 178 families (i.e. 712 persons) is now required to be used by 400 families consisting of 1600 persons, the area of Recreational Ground prescribed by Regulation 23 is insufficient.

3. Regulation 23 of the Development Control Regulations for Greater Mumbai, 1991 (for short “DCR of 1991”) provides for keeping open spaces in the residential and commercial layouts. It provides for keeping recreational and amenity open spaces. If Regulation 23 is

declared as ultra-vires the provisions of Article 21 of the Constitution of India, then requirement of keeping recreational/open spaces will disappear which will create a disastrous situation.

4. If the contents of Paragraph 16 of the Petition are read, it appears that the Petitioner wants Regulation 23 to be amended. Regulation 23 of the DCR, 1991 forms a part of the Development Plan in view of Section 22 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The preparation of Development Plan partakes the character of legislative function. Therefore, we are unable to direct that an amendment should be carried out to Regulation 23 as suggested in Paragraph 16 of the Petition. Regulation 23 cannot be “in excess of” provisions of Mumbai Municipal Corporations Act, 1888 (for short “the said Act of 1888”). The DCRs of 1991 are framed in exercise of the powers under the MRTP Act and not under the provisions of the said Act of 1888. Therefore, the prayer clause (a) cannot be granted. As far as prayer clause (d) is concerned, it serves no purpose. Perhaps, prayer clause (d) was sought in the light of the averments made in Paragraph 16 of the Petition.

5. As far as prayer clause (e) is concerned, the Municipal Corporation has power to amend the layouts in accordance with law. Therefore, such a blanket relief restraining the first and second

Respondents from exercising their statutory powers cannot be granted. As far as prayer clause (g) is concerned, it is a prayer for grant of interim relief.

6. For the reasons set out as above, no case for entertaining this Petition in writ jurisdiction under Article 226 of the Constitution of India is made out. The Petition is accordingly rejected.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)