

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 57 OF 2013

Brijlal Durgaprasad Tiwari	.. Petitioner
V/s	
The State of Maharashtra & Ors.	.. Respondents

Mr. Dharam Sharma with Ms. Uma Sharma i/b Dharam & Co. for the petitioner.

Mr. A.Y. Sakhare, Senior Advocate with Ms. Trupti Puranik for the Corporation.

Mr. Pravin Samdani, Senior Advocate with Mr. Chirag Balsara and Mrs. Asha Nair i/b Diamondwala & Co. for respondent no.9.

Mr. J.G. Reddy for respondent no.2.

**CORAM: DR. MANJULA CHELLUR, CJ. &
N.M. JAMDAR, J.**

DATE : 7th JULY 2017

P.C.:

The subject matter of dispute pertains to part of CTS No.821 (Survey No.282) situated at Kurar Village, Malad. It is not in dispute that way back in 1976, the property in question came to be occupied by several unauthorised occupants and was declared as a slum area. Though there was some litigation with regard to such declaration, ultimately in the year 1986, the Deputy Collector of Borivali Sub-Division again considered this property in terms of

section 3 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 and it was declared as a slum area.

2. According to the petitioner, about 5987.89 sq. mtrs. was reserved for Hindu Cemetery, but at the time of preparation of the scheme under SRA and in the plans submitted though an open area of 1496.90 sq. mtrs. is shown as cemetery, it is described as buildable reservation. Therefore, an apprehension is created in the minds of the petitioner and like minded persons that even this 1496.90 sq. mtrs. may not be available as cemetery for the purpose of the residents of the locality.

3. Apparently the entire area in and around this plot already kept under SRA has been developed. There seems to be correspondence between SRA, MCGM and the Developer so far as this land said to have been earmarked for the Hindu Cemetery. Ultimately in the revised Letter of Intent, it was made clear that this 1496.90 sq. mtrs. has to be set apart for Hindu Cemetery with all modern facilities which could be termed as a Green Cemetery in terms of directions of MCGM.

4. Apparently the affidavit dated 18th April 2016 filed by one Vijay Kunder clearly indicates what exactly the directions issued by the Authorities to him and what they intend to do with this CTS No.821 (Part) admeasuring 1496.90 sq. mtrs. reserved for Hindu Cemetery. It would be relevant to reproduce paragraphs 3 and 4 which clearly indicate ultimately how this 1496.90 sq. mtrs. has to be used and maintained.

“3. The reservation of Cemetery on part of C.T.S. No.821 (Part), which admeasure 5987.60 sq. mtrs. is a buildable reservation. Pursuant to Clause 7.5 of Appendix IV to Regulation 33(10) of DC Regulation 1991, requires to make available built up area equal to not more than 50% area of the entire plot or 25% of the area under that reservation in that plot, whichever is less, free of cost by the Slum Rehabilitation Authority for the Municipal Corporation. Taking into consideration the density of the entire plot which is being encroached upon by the Slum Dwellers and required to be rehabilitated in situ on redevelopment, the Respondent No.9 through their Architect made a representation dated 15th October 2013 and requested the Slum Rehabilitation Authority to consider proposing open plot 1496.90 sq. mtrs. for buildable reservation of Hindu Cemetery. The Architect of the Petitioner while making the representations also requested that Hindu Cemetery required a covered structure for pyre, electric crematorium and ancillary facilities. In view of the said representation the Slum Rehabilitation Authority by their Letter dated 15th January 2014 requested Deputy Chief Engineer (DP), after granting its approval, to consider accepting open plot admeasuring 1496.90 sq. mtrs. instead of equivalent built up area.

4. *Subsequent thereto Slum Rehabilitation Authority issued revised Letter of Intent on 13th August 2014, wherein the Slum Rehabilitation Authority had put a condition to make the plot of an area admeasuring 1496.90 sq. mtrs. for*

the purpose of Cemetery. Accordingly, the Respondent No.9 through their Architect submitted a revised amended layout demarcating a plot of land admeasuring 1496.90 sq. mtrs. for the purpose of cemetery. The said layout also shows the access road to the said Cemetery. The Slum Rehabilitation Authority had approved the revised layout by its approval dated 22nd September 2015.”

From the above two paragraphs, it is clear that this Green Cemetery meant for Hindu community will have covered structure for pyre, electric crematorium and other ancillary facilities. Since the cemetery would be in the middle of the residential colonies and since SRA Schemes have already been implemented, naturally with the modern facilities, the MCGM was justified in insisting upon a Green Cemetery from the point of pollution and other obstacles.

5. In that view of the matter, since MCGM, SRA and the Developer have uniformly accepted the position that this 1496.90 sq. mtrs. (part of CTS No. 821) has to be a Green Cemetery, it shall continue to be so. Therefore, in the light of the undertaking in the form of affidavit given by the respondent Developer which is supported by the affidavits filed on behalf of the respondent Corporation as well as the respondent SRA, we are of the opinion that nothing remains for consideration in this Public Interest Litigation except mentioning that a duty is cast on the SRA as well as the Corporation concerned to see that what is expressed in the form

of affidavit will be implemented in letter and spirit.

6. With the above observations, the PIL is disposed of.

(N.M. JAMDAR, J.)

CHIEF JUSTICE