

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 33 OF 2016
IN
COMMERCIAL SUIT NO. 78 OF 2016**

KalaVazirani & Ors	...Plaintiffs
<i>Versus</i>	
Omkar Realtors & Developers Pvt Ltd	...Defendants

Mr Ranbir Singh, *with Mr Manish Doshi, i/b Vimadalal & Co, for the Plaintiffs.*

Ms Samita Vazirani, *Daughter of Petitioner No. 2, present.*

Mr Cherag Bulsara, *a/w Ms. Asha Nair, i/b Diamondwala & Co, for Defendants.*

Mr Rahul Sinha, *a/w Mr Ravi Prakash & Mr Samir Mali, i/b DSK Legal, for Respondent No. 4 (SRA).*

**CORAM: G.S. PATEL, J
DATED: 2nd May 2017**

PC:-

1. The dispute in the suit is settled. Part of the settlement involves redevelopment of a plot. These details are set out in the Consent Terms. Not only the settlement, but the development of the plot CS No. 7E/1629, is severely impeded by what I believe is completely incorrect “designation” of a plot as an electric receiving

sub-station. To receive a “designation”, the plot in question is required in law to be developed for that purpose. This is clear from the draft development plan itself. There is no such development at all. The electric receiving sub-station was actually intended for the Defendants’ internal lay out, one that comprises a large parcel of plot of land. It was meant to serve a private layout and was not intended as a public utility. This is clear from the fact that the MCGM, now joined as Defendant No. 3, has clarified in its letter dated 12th August 2016 that this land was ‘inadvertently’ designated for the purposes of DPU 5.2 on the basis of a SRA layout. By an order dated 19th September 2016, the Public Information Officer in appeal clarified that this affixing of a so-called ‘designation’ was on the basis of ‘informal’ information that was unattested and unauthenticated. It was apparently supplied on a pen drive. Errors such as these have been widely reported. This is by no means a solitary case. I need not expand on this. It is sufficient to note that there is no reason in law why individuals, whoever they be, should have to suffer for on account of digital errors, over-enthusiasm or worse by public authorities.

2. The entire so-called designation is unsustainable from start to finish. It simply cannot be that once an error like this creeps in like a virus from pen drive, it require some elephantine Kafkaesque process to get rid of it. The mistake is that of the public authorities. It cannot come at the cost of the citizen. This designation is altogether *non est*, null and void. An error of this kind has no status in law at all. This is also not a case where a ‘designation’ is disputed, i.e., where it is under challenge by a citizen and being defended by an authority. The mistake is admitted and accepted. That puts it in a

different category, and no person should have to suffer loss or have his property rights imperilled on account of an admitted and accepted error by an administrative authority. Equally, the authorities must act, and act swiftly, to correct an accepted and admitted error. The Planning Authority must realize that the consequences of these errors are indeed serious and that individuals' rights to properties, settlements, rehabilitation and housing and more are all adversely affected by such an admitted, albeit inadvertent, error. Time will be lost in rectifying the error, and that cannot come at the cost of the rate payer. In not rectifying the error promptly, the public authorities cannot believe they are unaccountable in perpetuity for their mistakes. That, in my view, is an inequity that should not be tolerated for a moment.

3. The parties are entitled to proceed on the footing that there is no such designation, because, by an admission of the Planning Authority, the MCGM itself, there is indeed no such designation. Even the Special Planning Authority, the SRA, cannot support it and the Public Information Officer himself confirms that the entire so-called "clamping" of the designation is a clerical error.

4. The MCGM, SRA and the State Government in its Urban Development Department will within 45 days of the date of this order take the necessary steps, including under Section 37 of the Maharashtra Regional & Town Planning Act 1966, to formally correct and remove the error showing the designation of the electric receiving sub-station on the plot in question. What is required is only a ministerial act of implementing of this decision.

5. As to the rest of the Suit, the Consent Terms though in the Notice of Motion will dispose of the Suit. They are signed by the 2nd Plaintiff for himself and for the 1st Plaintiff and by the Plaintiff No. 3, as also by Mr Rajesh Patil, the Authorized Signatory of Defendant No. 1 and their respective Advocates. Plaintiff No. 2 and Mr Rajesh Patil are both personally present in Court.

6. The Consent Terms are in order. They are not contrary to law. I am satisfied by the Consent Terms are drawn by the parties of their volition in reflection of their true intentions. The Consent Terms are taken on record and marked "X" for identification with today's date. The undertakings in the Consent Terms are accepted as undertakings to the Court.

7. Mr Bulsara clarifies that in regard to the premises to be provided and referred to in Clause 1(i)(a) at page 3, the permissible user referred to therein does not include a rehab unit but refers the sale building. This is noted.

8. The Suit and the Notice of Motion are disposed of in these terms with no order as to costs. Refund of court fee, if any, in accordance with the Rules.

9. Liberty to the parties to apply.

(G. S. PATEL, J.)