

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

WRIT PETITION NO. 1837 OF 2015

Shri. Chandravandan D. Gohil	...	Petitioner.
V/s.		
State of Maharashtra and ors.	...	Respondents.

Mr. Harshil Parekh i/b M/s. Purnanand & Co. for the Petitioner.
Ms Jyothi Chavan, AGP for Respondent Nos.1 and 2.
Ms Pallavi Thakar for Respondent Nos.3 and 4.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 14TH DECEMBER 2017.

PC.:

1] Heard the learned counsel appearing for the petitioner, the learned AGP appearing for the 1st and 2nd respondents and the learned counsel appearing for the 3rd and 4th respondents.

2] Rule. The respondents waive service. Considering the narrow controversy, the same is forthwith taken up for final disposal.

3] IOD was granted to the petitioner on 23rd January 2015 by the 3rd respondent – Municipal Corporation. The condition No.57 was incorporated in the IOD, which reads as follows:

“57. That the NOC from Collector MSD for the proposed development shall not be submitted.”

4] The challenge in this petition is to the incorporation of the said condition.

5] The issue is no more *res integra*. The Division Bench of this Court had an occasion to deal with the said issue in the case of ***Hiren Bharani and ors vs. State of Maharashtra and ors.*** decided on **5th October 2006** in ***Writ Petition No. 3119 of 2003***. A Circular was issued by the State Government to the Municipal Corporation directing the Municipal Corporation to incorporate the condition of obtaining NOC from the Collector for the proposed development. The Division Bench held that the said Circular dated 31st October 2001 to the extent it directs the occupants of the land to produce NOC from the Collector is without authority of law.

6] Hence, the learned counsel appearing for the Municipal Corporation as well as learned AGP on instructions stated that they are bound by the aforesaid judgment and order dated 5th October 2006.

7] Hence, the petition must succeed. However, we noticed that the IOD issued on 23rd January 2015 was valid only up to 22nd January 2016. We therefore, clarify that the directions issued under the judgment will apply only if IOD issued on 23rd January 2015 continues to be valid till today.

8] Accordingly, we pass the following order:-

9] If IOD dated 23rd January 2015 (Exhibit-I to the petition) is valid as of today, the respondents shall not insist on the petitioner complying with condition No.57, which is reproduced above;

10] We also make it clear that we have made no adjudication on the question of title claimed by the petitioner to the subject property;

11] Rule is made partly absolute on above terms.

(M. S. SONAK, J.)

(A.S.OKA, J.)