

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

WRIT PETITION NO. 302 OF 2017

Sharad S. Jani

... Petitioner.

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Vishal Kanade a/w Mr. Viraj Maniar & Ms. Sneha Patil i/b M/s. Maniar Srivastava & Associates for the Petitioner.

Mr. Amit Shashtri, AGP for the Respondent No.1.

Ms. Vandana Thakar for the Respondent Nos. 2 and 3.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 22nd JUNE, 2017

P.C.:

. On 12th June, 2017, the parties were put to notice that this Petition will be disposed of finally at the stage of admission.

2 The factual controversy in this petition is brief and simple. The Petitioner claims to be the owner of the property subject matter of this petition. It appears that the Petitioner entered into a development agreement in respect of the said property with M/s. Hitech Hafizi Developers (for short "the said Developer"). An Architect was appointed by the said Developer to submit a proposal for grant of development permission as well as IOD. Accordingly, the development permission and IOD was granted which was modified subsequently on the basis of an application made by the said Architect.

3 On 23rd October 2015, another Architect Shri. Sanjay V. Shah submitted a fresh proposal on behalf of the Petitioner under Section 337 of the Mumbai Municipal Corporation Act, 1888 and Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). A supervision memo was submitted.

4 The challenge in this petition under Article 226 of the Constitution of India is to the communication dated 05th March, 2016 (Exhibit “O” to the petition) addressed by the Executive Engineer, Building Proposal of the concerned ward to the Petitioner. The material part of the said communication reads thus:

“Sir,

This office has received a requisition from Arch. Sanjay Shah for accepting his supervision memo on your behalf.

The request made shall be accepted on legal termination of development agreement entered by yourself with developer M/s. Hitech Hafizi Developers, by following due process of law.”

5 The submission of the learned Counsel appearing for the Petitioner is that the Petitioner is admittedly the owner of the property in question. He submits that the Mumbai Municipal Corporation cannot call upon the Petitioner to satisfy the Corporation that the Petitioner has lawfully terminated the development agreement with the developer by following due process of law. There is a reply filed by Shri. Navnath S. Ghadge, the Assistant Engineer (Building Proposal) R/C Ward. There are two contentions raised therein. The first contention is that Shri. Sanjay V. Shah, Architect appointed by the Developer has not obtained NOC from the Architect appointed by the developer. The second objection is enlisted in Clause-H of the paragraph 4 of the affidavit, which reads thus:

“H) I say that as per the Reg. No. 5 of D.C. Reg. 1991, every person

who intends to carry out the development Rule 3(ii) of Reg. 5 of D.C. Reg. 1991 clearly stipulates the documents to be insisted for ownership. I say that in this case the Petitioner has earlier created lien & encumbrances on property by way of entering into development agreement with M/s. Hitech Hafizi Developers. I say that on the strength of development agreement, the permission was granted by these Respondent to M/s. Hitech Fafizi Developers. I say that it is therefore necessary, to insist either deed of desolution of DA or NOC from DA holder for appointment of fresh Architect with the NOC from the earlier Architect."

(underline supplied)

6 We had kept back the matter to enable the learned Counsel appearing for the Mumbai Municipal Corporation to show the statutory provision which requires Shri. Sanjay V. Shah, Architect appointed by the Petitioner to submit NOC of the Architect appointed by the developer. The learned Counsel appearing for the Mumbai Municipal Corporation pointed out that though there is no such statutory provision, if a new Architect is submits the proposal without NOC of the earlier Architect, the experience of the Mumbai Municipal Corporation is that the earlier Architect makes a grievance with the Municipal Corporation. This argument is irrelevant. The question is whether in law, the Municipal Corporation can compel the Architect to submit NOC of the earlier Architect. As there is no such statutory provision, the Municipal Corporation is not justified in doing so.

7 As far as the second objection is concerned, the Mumbai Municipal Corporation placed reliance on Regulation 5 of the Development Control Regulations of Greater Mumbai, 1991 and in particular Sub-Regulation 3(ii). It provides that every application for development permission and commencement certificate shall be accompanied by the documents mentioned therein. The object of the provision seems to be that the Applicant must satisfy that he is the owner of the property especially because clause 4 of the Regulation 5 requires plans to

be signed by the owners.

8 It is true that clause (d) requires applicant to produce any of the documents as may be prescribed by the Commissioner. Sub-Clause (ii) of Clause 3 of Regulation 5 requires production of documents for verification ownership and area. Even according to the case of the Municipal Corporation, the developer was not the owner of the property in question. By virtue of the execution of development agreement, title is not transferred by the Petitioner. Therefore, even by exercising the powers under clause (d), the Municipal Commissioner could not have called upon the Petitioner to produce the documents showing that the Petitioner has terminated the agreement with the said developer by following due process of law. Therefore, in our view, the impugned communication cannot be sustained at all and accordingly, the petition is disposed of by passing the following order:-

ORDER

- i) The impugned Communication dated 05th March, 2016 is hereby quashed and set aside;
- ii) We direct the Mumbai Municipal Corporation to process and decide the proposal submitted by the Petitioner through its Architect Shri. Sanjay V. Shah without insisting upon the compliance with the requisitions set out in the impugned communication dated 05th March 2016;
- iii) The proposal shall be processed and decided without insisting upon Shri. Sanjay V. Shah producing no objection certificate of M/s. Sarang & Associates;
- iv) The petition is disposed of on above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)