

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2913 OF 2016**

Ranjan M. Patel

..... Petitioner.

V/s

Union of India & Others

..... Respondents.

Mr. Saket Mone a/w Mr. Subit Chakraborti i/b Vidhi Partners for the
Petitioner.

Mr. Dhanesh Shah a/w Mr. D.P. Singh for Respondent No.1./UOI

Ms. Sharmila Deshmukh for Respondent No.2.

Ms. Shobha Ajitkumar a/w Mr. Sagar Patil for Respondent/BMC.

**CORAM: V. M. KANADE &
A.S. GADKARI, JJ.**

DATE: 16th March, 2017

P.C.:-

1] Heard the learned Counsel appearing on behalf of the Petitioner, the learned Counsel appearing on behalf of the Corporation and the learned Counsel for MCZMA.

2] Petitioner is aggrieved by the order/letter dated 21/1/2016 passed by the Assistant Engineer (Building Proposal) K/West (South). By the said order/letter, the plan submitted by the Petitioner for approval in respect of the proposed development on plot bearing CTS No.1065, plot No.30D of final plot No.30 of Santacruz Town Planning Scheme-II was rejected. The only reason which was given for rejection

was that the existing building of the Petitioner was declared as dangerous after CRZ Notification dated 06/01/2011.

3] The learned Counsel appearing on behalf of the Petitioner submitted that this Court in Writ Petition No.2035 of 2014 and 1108 of 2013 has held that “identified buildings’ as mentioned in the Notification would not be restricted to buildings which are old and dilapidated, cessed and unsafe buildings as on 06/01/2011 but would also include those buildings which become unsafe and dilapidated subsequently so as to get the exception available under paragraph 8(V)(c)(1). In the said Notification, Clause 8(V)(c)(1) makes a reference to the dilapidated, cessed and unsafe buildings. The said clause reads as under:-

“(c) REDEVELOPMENT OF DILAPIDATED, CESSED AND UNSAFE BUILDINGS:

1. In the Greater Mumbai, there are, also a large number of old and dilapidated, cessed and unsafe buildings in the CRZ areas and due to their age these structures are extremely vulnerable and disaster prone and therefore there is an urgent need for the redevelopment or reconstruction of these identified buildings.

2. These projects shall be taken up subject to the following conditions and safeguards:

(i) such redevelopment or reconstruction projects as identified on the date of issue of this notification shall be allowed to be taken up involving the owners of these buildings either

above or with private developers in accordance with the prevailing Regulation, directly or through joint ventures or through other similar models.

(ii) The Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority.

(iii) Suitable accommodation to the original tenants of the specified buildings shall be ensured during the course of redevelopment or reconstruction of the buildings by the project proponents, undertaking the redevelopment through condition 2(i) above.”

It is obvious that the said clause carves out an exception to the general rule in respect of these identified buildings viz. dilapidated, cessed and unsafe buildings. In our view, having carved out the exception, it does not stand to reason that the said exception would be available only to those identified buildings which are so identified as on 06/01/2011. We, therefore, by the said orders, had accordingly interpreted the said Notification dated 06/01/2011. The said orders were not challenged by MCZMA or MOEF in the Apex Court and in the affidavit-in-reply they have accepted this position and this is evident from the Minutes of the Meeting dated 7/11/2015.

4] In another matter viz. WPL/2088/2016, this Court by Order dated 05/08/2016 directed the Corporation to process the application of the Petitioner on the basis that the said exception is applicable to

the Petitioner's building. In the present case, therefore, the reason given by the Corporation is untenable and the impugned order will have to be set aside and it is accordingly set aside.

5] Petitioner may submit a revised plan by making online application.

6] We direct the Corporation to process the application of the Petitioner and it may provide that it is willing to grant sanction, subject to the Petitioner obtaining clearance from MCZMA and this process may be completed within six weeks.

7] Petition is accordingly disposed of in the aforesaid terms.

(A.S. GADKARI, J.)

(V.M. KANADE, J.)