

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2953 OF 2016

Navbharat Potteries Pvt. Ltd. .. Petitioner

Vs

Municipal Corporation for Greater Mumbai
and Others. .. Respondents

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Shri Piyush Raheja along with Sahil Gandhi i/b M/s. Markand Gandhi &
Co. for the Petitioner.

Shri S.S. Pakale along with Ms. Vandana Mahadik for the Respondents
BMC.

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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 15TH JUNE 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. Heard learned counsel appearing for the Petitioner and
learned counsel appearing for the Respondents- Mumbai Municipal
Corporation.

2. Rule. The Advocate for the Respondents Mumbai
Municipal Corporation waives service. Taken up forthwith for final
disposal.

3. The Petitioner is claiming to be the owner of a plot of land
which is more particularly described in Paragraph 3 of the Petition. It is

the case of the Petitioner that it carries on business on the said plot of land. It is an admitted position that in the Development Plan of the year 1991 sanctioned under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”), the said plot is affected by reservation of 60 feet (18.30 meters) wide Development Plan Road on two sides i.e. on South and West Side. The Petitioner is relying upon the alignment of the Development Plan Road in Paragraph 5 of the Petition. On 26th August 1997, the Petitioner was granted Development permission for construction of additional building. The case made out in the Petition is that the Petitioner has not taken benefit of FSI in respect of the Development Plan Road, and therefore, the condition imposed in the IOD requiring the Petitioner to hand over the possession of the Development Plan Road/set back area will not apply in the present case. It is pointed out in the Petition that there is a massive encroachment on the properties adjoining the said plot of the Petitioner including the portion of the land reserved for the Development Plan Road. The Petitioner is relying upon a letter dated 7th May 1999 issued by the Ward Officer granting permission to the Petitioner to construct two gates. The Petitioner has taken an exception by this Petition under Article 226 of the Constitution of India to the letters dated 1st July 2016, 25th July 2016, 8th August 2016 and 20th September 2016 (Exhibits N, Q, S and U respectively).

4. Exhibit N is the letter dated 1st July 2016 addressed to the Petitioner by the Mumbai Municipal Corporation. By the said letter, the Petitioner was informed to demolish unauthorized gates constructed on the portion affected by road line of the road having width of 18.30 metres. Exhibit Q is the letter dated 25th July 2016 addressed by the Assistant Engineer (Building Proposal) City-V. In the said letter, it is specifically mentioned that as per the lay out Condition No.4, the portion of the Development Plan Road/set back area is to be handed over by the Petitioner to the Municipal Corporation which is not yet handed over. It refers to the Development Plan Road having the width of 18.30 metres . Exhibit S is the reminder dated 8th August 2016 addressed to the Petitioner by the Municipal Corporation. By the said reminder, the Petitioner was called upon to demolish unauthorized gates constructed in the set back road portion. The last impugned letter at Exhibit U is dated 20th September 2016. By the said letter, the Petitioner was informed by the Municipal Corporation that as per the approval dated 27th January 1994 granted by the Department of EE (BP) City, a part occupation permission was granted in respect of the developed property. By the said letter, the Petitioner was called upon to hand over the set back portion on the Development Plan Road failing which, a seven days' notice under Section 299 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) will be issued.

5. The first submission of the learned counsel appearing for the Petitioner is that though the letter dated 25th July 2016 refers to the layout Condition No.4, in fact, there is no such condition has been imposed. The second submission is that in the IOD dated 27th January 1993, the condition imposed is of surrendering the portion of Development Plan Road provided FSI of the said road is used. He submitted that no such FSI has been used. He also tendered across the bar a letter dated 9th April 1997 addressed to the Architect of the Petitioner by which the proposal for development was sanctioned. He submitted that the action under Section 299 of the said Act of 1888 cannot be taken as the road line has not been fixed. He submitted that the Municipal Corporation has no right to compel the Petitioner to hand over possession of the land covered by the Development Plan Road. He lastly submitted that the Petitioner is willing to hand over the possession of the land covered by Development Plan Road to the Municipal Corporation provided the Municipal Corporation gives an undertaking to this Court to ensure that there are no encroachments made on the set back area/the area of the Development Plan Road and that the Municipal Corporation constructs a Development Plan Road within a particular time. He submitted that the Petitioner is not under an obligation to hand over the portion of the land required for the Development Plan Road to the Municipal Corporation. If the Municipal

Corporation gives such undertaking, the Petitioner will hand over the possession thereof.

6. We have given careful consideration to the submissions. It is true that the first impugned letter dated 1st July 2016 refers to the road line of 18.30 metres. However, there is no dispute that the said plot of land of the Petitioner is affected by the 18.30 metres wide proposed Development Plan Road in the sanctioned Development Plan of the year 1991. It will be necessary to make a reference to the contents of the letter dated 25th July 2010 at Exhibit Q. The said letter refers to the Development Plan Road. Relevant part of the said letter reads thus:

“As per layout conditions No.4, the portion of D.P Road/set back is to be handed over to M.C.G.M which is not yet handed over to M.C.G.M and also not submitted demarcation of said road before C.C. and it is observed that you have constructed the gate at both ends of the D.P. road.”

7. The Petitioner replied to the said letter by its letter dated 2nd August 2016. Admittedly, in the reply, the Petitioner has not come out with the contention that either there is no layout as referred in the said letter dated 25th July 2016 or that there is no such Condition No.4. In fact, in the reply dated 2nd August 2016, the Petitioner has not specifically disputed the existence of the layout Condition No.4. In the

letter dated 20th September 2016 Exhibit U, the Municipal Corporation has stated thus:

“With reference to your letter above reference no.3 it is inform you that this office had received your letter dtd. 21st July 2016 & copy of layout plan showing the proposed D.P. road i.e. set back area which is in your possession till year 1999 and also showing the encroachment on proposed D.P. Road i.e. not developed yet. As per available records Navbharat Estate Potteries on plot bearing C.S. No. 5E/172 & 2/173 of Parel Sewree Division had been developed by obtaining approvals from the dept. of EE(BP) City.u/no. EEBPC/3130/FS/A of 27.01.1994. In the said approval Dy. Ch.E.(BP)City had issued part occupation permission to your above reference developed property & also, instructed to obtain necessary permission/NOC and payment of different Pro Rata charges to MCGM by that handing over of peaceful & unencroached setback of DP Road to MCGM by you.”

8. The Municipal Corporation has relied upon the approval granted under the letter dated 27th January 1994 which requires the Petitioner to hand over peaceful and unencroached set back area of Development Plan Road to the Municipal Corporation. We find that a copy of the approval dated 27th January 1994 referred in the letter dated 20th September 2016 Exhibit-U has not been produced by the Petitioner to show that no such condition has been imposed therein. In the same letter dated 20th September 2016, it is stated that if the Petitioner fails to hand over the possession, the same will be taken over by invoking Section 299 of the said Act of 1888.

9. In the circumstances, we will have to proceed on the footing that there is no dispute that the layout condition No.4 is imposed as stated in the letter dated 21st July 2016. During the course of submissions, the learned counsel appearing for the Petitioner tried to submit that the Petitioner's Architect has informed that there is no such condition. However, he candidly states that he has not personally seen the layout conditions. As stated earlier, if there was no such layout condition No.4, the Petitioner would have raised a specific contention to that effect in the reply to the said letter. In fact, such a case is not made out in the Writ Petition itself.

10. Therefore, we find nothing illegal about the demand made by the Municipal Corporation to the Petitioner to hand over that portion of the land which is covered by the proposed Development Plan Road. It is not in dispute that the plot of the Petitioner is affected by the Development Plan Road. We are not entering into the controversy whether the Municipal Corporation can invoke Section 299 of the said Act of 188 for taking over the possession of the portion reserved for Development Plan Road. As of today, no such action is initiated. Section 299 of the said Act of 1888 requires the Municipal Corporation to give a minimum seven days notice in writing before taking over possession. If such notice is issued, the Petitioner can challenge the

same in accordance with law. As per the layout condition, the Petitioner is under an obligation to hand over the portion of the plot of land affected by the said Development Plan Road to the Municipal Corporation.

11. In the Writ Petition, the Petitioner is relying upon the permission granted on 7th May 1999 to put up the gates on the portion covered by the Development Plan Road Reservation. Page 59 of the Petition is the said permission which imposed a condition which reads thus:

“1. Whenever the existing road widens as per revised Development Plan, you may shift the same, as per the new alignment, at your cost without claiming any compensation for the same; according to the undertaking submitted by you.”

12. Lastly, we may deal with the submission made by the learned counsel appearing for the Petitioner that the Petitioner is willing to hand over possession of the area reserved for Development Plan Road provided the Municipal Corporation gives an undertaking to this Court to ensure that no encroachment is made on thereon and the Development Plan Road is constructed.

13. It is the obligation of the Municipal Corporation as the Planning Authority to implement the Development Plan and to

construct Development Plan Roads. There is no law which requires the Municipal Corporation to give an undertaking to the Court to ensure that there is no encroachment on the portion reserved for the Development Plan Road. At the same time, it is the statutory obligation of the Municipal Corporation to see that maximum possible efforts are made to ensure that no encroachment is made on the site of the Development Plan Road. However, we cannot issue a direction to the Municipal Corporation to give an undertaking as contended by the learned counsel appearing for the Petitioner.

14. The learned counsel appearing for the Petitioner also tried to contend that notwithstanding the direction issued by this Court, the Municipal Corporation has not filed any affidavit-in-reply. We have perused the orders of this Court passed on 15th October 2016 and 19th October 2016. There is no direction issued by this Court to the Municipal Corporation to file an affidavit. The Municipal Corporation on its own made a statement on 19th October 2016 that an affidavit will be filed.

15. In any case, the Petition must fail if we take into consideration the documents which are annexed to the Petition and consider the averments made in the Petition.

16. Hence, there is no merit in the Petition and the same is accordingly rejected.

17. The ad-interim relief granted on 19th October 2016 will continue to operate for a period of six weeks from today.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)