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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.443 OF 2016
IN
WRIT PETITION NO.1734 OF 2013**

Neelkamal Shantinagar Properties Pvt. Ltd. and Anr. ... Applicants
Vs.
State of Maharashtra and Ors. ... Respondents

Ms. Tanmayi Rajadhyaksha a/w Ms. Rujuta Patil, Ms. Niyathi Kalra for
the Applicants.

Mr. Hemant Haryan, AGP for the Respondent Nos.1 and 2.

Ms. Vandana Mahadik for the Respondent No.3.

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

DATE : 12th JULY, 2017

P.C.

1 Heard the learned counsel appearing for the applicants
who are the writ petitioners and the learned counsel appearing for the
third and fourth respondents (Mumbai Municipal Corporation and the
Commissioner of the said Corporation).

2 The prayer made in this Notice of Motion is for directing
the Permanent Advisory Committee constituted under the Government
of Maharashtra notification dated 4th December, 2013 to dispose of the

representations made by the applicants in their letters dated 29th June, 2016 and 22nd September, 2016. Copies of the representations have been annexed to the affidavit in support of Notice of Motion.

3 The prayer made in both the representations is for grant of approval to the proposal of the applicants for construction of buildings.

4 The applicants have annexed copies of the relevant notifications. The first notification is dated 4th December, 2013. The said notification is an order passed by the State Government in exercise of powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). The Government direction is that prior permission of Advisory Committee constituted under the said notification is compulsory for grant of any development permission within a distance of 500 meters surrounding the prisons in the jurisdiction of the concerned Planning Authorities. The Permanent Advisory Committee for the Municipal Corporation area consists of Municipal Commissioner as its Chairman and the Commissioner of Police and Deputy Inspector General of Prisons as its Members. The functions of the Advisory Committee have been set out in clause 2 of the said Government notification which read thus :-

“2) Functions of the Permanent Advisory Committee

1. All proposed development works within 500 meters distance from the rampart wall of the prison

surrounding the prison will be within the purview of this Committee. The said Committee will consider all proposed development works within the 500 Meters distance surrounding the Prison and subject to security of Prisons as well as guiding principles prescribed in this regard by the Government from time to time and render guidance to the concerned Planning Authority whether to grant permission or not and on what conditions the permission is to be granted.

2. The guidance of the Permanent Advisory Committee will be binding on Planning Authority. However, in case the guidance given by the Permanent Advisory Committee in some matter is not acceptable to the Planning Authority, it will be compulsory for the Planning Authority to make a reference mentioning the reasons for the same to the Government in Home Department. The Home Department after consulting the Urban Development Department for such reference will decide the Government's final role in such reference and inform accordingly to all concerned.”

5 Further notification dated 6th August, 2015 deals with the powers of the Permanent Advisory Committee constituted under the notification dated 4th December, 2013. The said Government notification incorporates guidelines which are required to be considered by the Advisory Committee constituted under the notification dated 4th December, 2013. The said notification refers to grant of permission for project of construction or project of rehabilitation within a distance of

500 meters from the jail but beyond 150 meters. The notification clarifies that the Committee constituted under the notification dated 4th December, 2013 can deal with the question of granting permission within the distance of 150 meters to projects which are already approved.

6 We may note here that notification dated 4th December, 2013 does not restrict the powers of the Permanent Advisory Committee to deal with the applications seeking permission for construction. The notification is very clear. It shows that all proposed development work within 500 meters as provided in clause 2 thereof will be within purview of the Committee.

7 Today, the learned counsel appearing for the Mumbai Municipal Corporation has produced for perusal of the Court the minutes of the meeting of the Standing Advisory Committee. The minutes are of the meeting held on 5th April, 2017. Firstly, we may note here that though the Municipal Commissioner and the Inspector General (Prisons) were present, the Commissioner of Police who is the Member of the Advisory Committee was not present. The Committee after considering the case of the applicants has decided to refer the proposal to the Urban Development Department for seeking clarification whether the proposals of the buildings proposed to be

constructed within 150 meters can be approved by the said Committee. The learned counsel has also placed on record a letter dated 30th June, 2017 submitted by the Chief Engineer to the Principal Secretary of Urban Development Department by which clarification is sought.

8 On conjoint reading of notifications dated 4th December, 2013 and 6th August, 2015, prima facie, we are of the view that there is no embargo on the powers of the Committee of considering the applications made for carrying out development work within a distance of 150 meters from the jail.

9 However, the Municipal Corporation has already moved the State Government for seeking clarification. In the circumstances, we dispose of this Notice of Motion by passing the following order :-

ORDER

- (i) The State Government in the Urban Development Department will take appropriate decision on the proposal dated 30th June, 2017 submitted by the Mumbai Municipal Corporation as expeditiously as possible and in any event within a period of one month from today. If the State Government is of the opinion that the Committee constituted under the aforesaid notification is not competent to take decision, the State

Government shall itself take a decision on the representations made by the applicants which are subject matter of this Notice of Motion within a period of three months from today.

(ii) If the State Government is of the view that the Committee constituted under the said notification dated 4th December, 2013 is competent to take a decision on the representations made by the applicants, the said Committee shall take final decision within a period of six weeks from the date on which the decision of the Government is communicated to the Municipal Commissioner;

(iii) We clarify that the representations which are made by the applicants have been specifically made without prejudice to their rights and contentions in Writ Petition No.1734 of 2013;

(iv) All concerned to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)