

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7268 OF 2018

Gera Developments Pvt. Limited
and Another.

..Petitioners.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. D. J. Dalal for the Petitioners.

Ms. A. A. Purav, AGP for the Respondent-State.

Mr. A. P. Deshpande for Respondent No. 2 to 4.

Coram : RANJIT MORE &
REVATI MOHITE DERE, JJ.

Date : **November 27, 2018.**

P. C. :

1. Heard. The petition is filed for the following reliefs :

"[A] That this Hon'ble Court be please dto issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950 quashing the Impugned Office Circular dated 16th April 2018 dated 16th April 2018 bearing O/w No. MAA/ SHAJA/ 908 passed by Respondent No.3 Municipal Commissioner of PMC on the ground that the said circular is passed arbitrarily without any application of mind and illegal and bad in law.

[B] Alternatively, if this Hon'ble Court comes to the conclusion that the impugned circular dated 16th April 2018 is valid, then this Hon'ble Court be pleased to declare that the said impugned circular dated 16th April 2018 will have no application to the Petitioners project titled "Gera's Misty Waters" on the property situated at Mundhwa (remaining Keshavnagar), District Pune bearing Survey No. 9 to 14, Hissa No.1/12 admeasuring 7900 sq. mtrs. and also direct Respondent No. 2 to 4 not to take possession of the amenity space admeasuring 1057.74 sq. mts.

[C] That, this Hon'ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, directing Respondent No. 2 to 4 to accept and approve the Building Plan for the amenity space admeasuring 1057.74 sq.mts.

within a period of three weeks from the date of submission of the said plan by the Petitioner to Respondent No. 2 to 4 or within such time period as this Hon'ble Court may deem fit without being influenced by the impugned circular dated 16th April 2018."

2. Under the impugned circular, general directions are given that before granting building permission in 11 villages which have been included in Pune Municipal Corporation area, the Corporation should take possession of amenity space in the lay-out.

3. The contention of the Petitioner is that its layout was sanctioned by Pune Metropolitan Region Development Authority [PMRDA] – Respondent No. 5, and an option was given to the Petitioner either to develop the amenity space or hand over the same to the planning authority. The Petitioner in this regard relied upon the conditions of revised lay-out annexed at Exhibit-C to the petition. The Petitioner relying upon the conditions of sanctioned lay-out, submitted that option was given to the Petitioner by the PMRDA either to develop this amenity space or hand over the same to the PMRDA. In this regard, the Petitioner relies upon Condition No.7 at page No.28 to the petition. We have gone through condition No.7 and do not agree with the submission of the Petitioner. The said condition stipulates that the Petitioner is duty bound to keep 15% area out of the total area of the

plot as amenity space. It further states that before handing over amenity space to the planning authority, the owner, i.e., the Petitioner should get measured the land in question from the land record office. Condition No.7 does not stipulate that the Petitioner is entitled to develop the amenity space.

4. Be that as it may, admittedly the village in which the said lay-out has been sanctioned by the PMRDA, is now included in the jurisdiction of Pune Municipal Corporation and obviously therefore the Development Control Regulations as applicable to the Pune Municipal Corporation area are now applicable to the subject plot of land. Under the Development Control Regulations of Pune Municipal Corporation, it is obligatory on the part of the Petitioner to hand over amenity space to the Corporation. The Petitioner is also at liberty to develop the amenity space and hand over the same to the Corporation as per the DCR of Pune Municipal Corporation and in that event, he is entitled to get additional TDR. It is not case of the Petitioner that he wants to develop the amenity space and hand over the same to the Corporation. The Petitioner does not want to hand over the amenity space to the PMC – planning authority. The actions of the Petitioner cannot be countenanced. The impugned circular is in accordance with

the DCR of Pune Municipal Corporation. We, therefore, do not find any substance in the writ petition and the same is accordingly dismissed.

[REVATI MOHITE DERE, J.]

[RANJIT MORE, J.]