

short “*the Act of 1960*”). Even according to the case of the Petitioner, it is a tenant co-partnership society. The plot subject matter of this Petition being Plot No. 19 was admittedly allotted by the Petitioner society to the 1st Respondent for construction of a house. The Challenge in this Petition is to the development permission granted by the Mumbai Municipal Corporation on 28 September 2010 and 22 October 2012 as well as commencement certificates issued in the same years under which the 1st Respondent was permitted to construct a multi storied building. By way of amendment, there is a challenge to the occupation certificate dated 2 September 2016 granted to the building after its completion. It appears that the 1st Respondent has parted with possession of the flats in the building in favour of the added Respondents.

2. It is not in dispute that the 1st Respondent filed a dispute under Section 91 of the Act of 1960 against the Petitioner society and there is an interim order passed by the Co-operative Court which restrains the Petitioners from

interfering with the construction which was to be carried out by the 1st Respondent on the Plot No. 19. Admittedly, the said order is in force till today.

3. The learned Counsel appearing for the Petitioner submitted that as per the bye-laws of the Petitioner society, the Petitioner continues to be the owner of the plot allotted to the 1st Respondent and the bye-laws lay down that an Application for development permission can be filed only by the Petitioner society. He invited our attention to the undertaking given by the 1st Respondent to the Petitioner Society in terms of the bye-laws. He submitted that as per the relevant Development Control Regulations, the Municipal Corporation could have entertained an Application for grant of development permission filed by the Petitioner and not by the 1st Respondent. He submitted that the construction carried out by the 1st Respondent is in breach of the bye-laws and the undertakings given by the 1st Respondent. He submitted that the construction carried out is in breach of the CRZ Regulations. He also pointed

out that an *ad-interim* order passed by this Court on 26 March 2014 records that the construction is subject to final decision of this Court.

4. We have considered the submissions. It is not in dispute that today there is an order of a Competent Court against the Petitioner which restrains the Petitioner from interfering with the work of construction of the 1st Respondent on Plot No. 19. There is no dispute that the 1st Respondent is an Allottee of the said Plot. Taking the case of the Petitioner as correct, the 1st Respondent has committed breaches of bye-laws with which the Municipal Corporation being the Planning Authority is not concerned. It is not the case of the Petitioner that there is any violation of rules in relation to FSI or violation of any of the Development Control Regulations as far as the nature and extent of the construction carried out by the Respondent No. 1. As far as the allegations regarding violation of the CRZ Regulations are concerned, the averments to that effect in paragraph 21 are very vague. It is not stated as to how

the said Plot is affected by the CRZ Regulations and whether the Plot falls in CRZ-I or CRZ-II or CRZ-III. The allegations made in paragraph 21 are as vague as possible and on the basis of such vague allegations, even a *prima facie* finding cannot be recorded that there are violations of CRZ Regulations.

5. The dispute filed by the 1st Respondent is pending before the Co-operative Court. If according to the case of the Petitioner, the 1st Respondent has committed breaches of the bye-laws, the Petitioner can always initiate appropriate proceedings against the 1st Respondent for committing breach of bye-laws. It is obvious that the construction carried out by the 1st Respondent on the basis of the interim order passed by the Co-operative Court is subject to the final outcome of the dispute pending before the Co-operative Court.

6. If the case made out by the Petitioner is to be accepted, at highest, it can be said that the 1st Respondent has committed breaches of bye-laws and breaches of undertakings

given to the Petitioner as per the bye-laws. But that is not the ground to challenge the validity of the development permission and occupation certificate granted by the Planning Authority.

7. Therefore, this is not a fit case to entertain a Writ Petition under Article 226 of the Constitution of India. Therefore, subject to what is observed above, the Writ Petition is rejected.

8. We however, make it clear that we have made no adjudication in respect of the question whether the 1st Respondent has committed breach of bye-laws. We also make it clear that we have made no final adjudication on the question whether subject plot is affected by CRZ Regulations. We also clarify that all issues which are arising in the pending dispute before the Co-operative Court are expressly kept open and the Co-operative Court shall decide the same on its own merits.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]