

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 399 OF 2018

Sherin Fakhrudin Jasdenwvalla. ... Petitioner.
V/s.
The Municipal Corporation of Greater Mumbai
and another. ... Respondents.

Mr.Y.N.Muchala, Senior Advocate with Mr.Sagheer A. Khan and
Mr.Musaddique Momin i/b. Judicare Law Asso. for the petitioner.
Ms.K.H.Mastakar with Ms.Vandana Mahadik for respondent No.1-MMC.
Mr.A.L.Patki, Addl.GP for respondent No.2- State.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th June 2018.

PC.:

Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the first respondent. The learned Additional Government Pleader appears for the second respondent. Considering the nature of controversy involved in this petition and considering the statement made by the learned counsel appearing for the petitioner on the basis of sanctioned revised draft Development Plan-2034 for the city of Mumbai, we forthwith take up this petition for final disposal.

2. The petitioner made an application for grant of development

permission to the first respondent- Municipal Corporation for construction of a residential hotel on property bearing City Survey No.11/222 of Byculla Division, Dr.Anandrao L. Nair Road, E-Ward, Mumbai. By a communication dated 14th August 2018, the said application for development permission was rejected by passing following order:

“ With reference to your above subject letter, this is to inform you that, as per Regulation no.69 of D.C.R. 1991, “in the development of sites of existing filling and service station of Petrol Diesel, Compressed Natural Gas or any other Motor Vehicle Fuel, change of user shall not be permitted.”

Further, as per S.R.D.P Of 'E' ward the land bearing C.S.No.11/222 of Byculla Division is not reserved/ designated for the public purpose. Hence your request for grant of development permission for proposed Residential hotel Building on Property Bearing CS No.11/222 of Byculla Division can not be considered.”

Being aggrieved by the said order, the petitioner filed Writ Petition No.2992/2014 which was disposed of by the judgment and order dated 4th October 2016. Paragraphs-3 and 4 of the said judgment and order read thus:

“3] As on the date of passing the impugned order rejecting the plan of the writ petitioner, virtually there was no existence of filling and service station of petrol, diesel compressed natural gas as indicated in Regulation 69.

4] In that view of the matter, there was no justification for the respondent authorities to reject the plan submitted by quoting Regulation 69 of DCR of 1991. Therefore, we are of the opinion that the writ petition has to be allowed

by setting aside Exhibit 'I' dated 27th August 2014 at page 101 of the writ papers.”

In paragraphs-5 and 6, this Court noted that a draft development plan for the city of Mumbai has been published for which objections were called for. After considering this fact, by setting aside the communication/order dated 27th August 2014, this Court directed the first respondent to reconsider plan/ application for development permission submitted by the petitioner and to decide the same within a period of two months. Accordingly, an order was made by the Deputy Chief Engineer (Building Proposals), City on 29th November 2016, the operative part of the which reads thus:

“ The proposal was rejected on the basis of provisions of D.C.Reg. 69, of D.C.R. 1991, which was challenged by the Petitioner in the High Court order dated 04.10.2016. Since High Court has considered that D.C.R. 69 is not applicable for the case under reference, since the plot is designated for fuel station as per Revised Draft D.P. May 2016 (2034), the matter will be submitted for consideration of U.D. Deptt. through Ch.Eng.(D.P)/ Law Officer/ Hon'ble M.C. Whether to accept the request of the Petitioner or otherwise.”

3. The learned senior counsel appearing for the petitioner, on instruction, states that in the revised draft Development Plan- 2034 which is sanctioned by the notification dated 8th May 2018, the designation of the plot in question for fuel station is not maintained and, in fact, there is no reservation or designation shown on the said plot.

4. After finding that in the revised draft Development Plan-2034 which was pending for consideration of the State Government, the said plot was designated for fuel station, in view of section 46 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”), the application for development permission was not granted. The Deputy Chief Engineer directed that a reference should be made to the Urban Development Department of the State on the question whether request of the petitioner should be accepted. Obviously, in the light of the proposed reservation, for giving effect to section 46 of the MRTP Act, the development permission could not have been granted.

5. The application for development permission made by the petitioner was rejected by communication dated 27th August 2014 only on the basis of Regulation No.69 of Development Control Regulations for 1991. By the order dated 4th October 2016, this Court held that there was no justification for invoking Regulation No.69 of the Development Control Regulations of 1991. The judgment and order dated 4th October 2016 of this Court has become final. The application made for grant of development permission which was remitted by this Court to the first respondent was kept pending only on the ground that in the revised draft Development Plan-2034, the plot in question was shown designated as a fuel station. If the petitioner is right in submitting that in the sanctioned revised Development Plan-2034, there is no reservation or designation provided for the said plot, now there is no impediment in the way of the Municipal Corporation in proceeding to consider the application for development permission on merits. If in the sanctioned revised

Development Plan-2034, the plot in question is shown as free from any reservation or designation, the ground set out in the impugned order dated 29th November 2016 will not survive.

6. In the circumstances, we dispose of this petition by passing the following order:

- (i) We direct the Deputy Chief Engineer (Building Proposal), City to examine the revised draft Development Plan-2034 sanctioned on 8th May 2018 and to ascertain whether there is any designation or reservation provided on the said plot in the said sanctioned development plan. It will be also open for the petitioner or his Architect to invite attention of the Deputy Chief Engineer to the relevant part of the notification dated 8th May 2018 and annexure thereto for satisfying the Deputy Chief Engineer that in the sanctioned revised development plan 2034 there is no designation or reservation provided on the said plot. This exercise shall be completed by the Deputy Chief Engineer within a period of two weeks from the date on which this order is uploaded. If the Deputy Chief Engineer finds that there is no designation or reservation or even a draft reservation or designation in the notification dated 8th May 2018, he shall proceed to consider the application made by the petitioner for development permission on merits and take appropriate decision thereon within a period of two months from the date on which this

judgment and order is uploaded;

- (ii) It is obvious that the ground of rejection set out in communication dated 27th August 2014 is no longer available to the first respondent. It is also made clear that if there is no reservation/ designation or draft reservation or designation maintained on the said plot in the notification dated 8th May 2018, Section 46 of the MRTP Act will not come in the way of the Municipal Corporation in considering the application for development permission in accordance with law;
- (iii) The petition is disposed of on the above terms.
- (iv) All concerned to act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)