

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

PUBLIC INTEREST LITIGATION NO. 90 OF 2016.

Mr.Vijay Moreshwar Vengurlekar .. Petitioner
Vs
Dahanu Municipal Council and others .. Respondents

Mr.Sidhesh Pilankar i/by Mr.Uday P.Warunjikar, for the Petitioner.

Mr.R.S.Datar, for Respondent No.1.

Mr.M.M.Pabale – Additional Government Pleader, for Respondent No.2.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.***

Date : 22 April, 2019.

P.C. :

1. Heard learned counsel for the parties.
2. Filed in public interest, it is pleaded that on City Survey No.8/19/1/5/1, the first Respondent granted permission to erect a building and stipulated permissible ground coverage was 296.87 sq.metres. It is pleaded that the construction effected was on 361.90

sq.metres plinth area. This is the first violation pleaded. Second violation pleaded is to non-adherence of National Highway (Land and Traffic) Act 2002 which mandates a minimum distance to be maintained from the centre of a National Highway while constructing a building. It is pleaded in the Petition that when the layout of the area was sought for from the first Respondent under Right to Information Act, the response was that the layout was not available.

3. In the reply filed by the counsel it is pleaded that the FSI permissible was 0.5. The said response is evasive for the reason the plot size not being mentioned, FSI by itself would not be indicative of the permissible ground coverage. The FSI can be utilised horizontally as well as vertically and thus, it was for the first Respondent to have specifically pleaded what was the plinth area permitted to be utilised and what was the height of the building which was sanctioned. On the issue of maintaining the distance required from the centre of the road it is pleaded that when the sanction was accorded there being no approved layout the question of incorporating said requirement of maintaining distance from the centre of the road could not be adhered to.

4. The reply filed is perfunctory and guides the courts nowhere.

5. In the absence of the sanctioned layout, it would be

difficult for the Court to decide on the second controversy.

6. The Ministry Urban Development, State of Maharashtra would therefore be the authority to look into the issue.

7. We dispose of the Petition directing the second Respondent to call for records of the first Respondent pertaining to the sanction granted to construct the building in the City survey mentioned hereinabove. The second Respondent would ensure that the layout of the area showing the site where National Highway-4 passes the area in question is produced. If needed, the second Respondent would depute an officer to visit the spot and from the centre of the National Highway measure the distance of the building which has been constructed. If the building is within the line of control the second Respondent would pass necessary order requiring law to be complied with. On the issue of plinth area built upon, the second Respondent would call for the record of the first Respondent and identify what was the total built up area sanctioned, what was the plinth area per floor which had to be erected. How many storeys were permitted. If there is a violation orders would be passed to demolish the unauthorised part of the structure in question.

8. Compliance will be made within six months from today.

N.M.JAMDAR, J.

CHIEF JUSTICE