

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6267 OF 2007
with
CIVIL APPLICATION NO. 2561 OF 2018
in
WRIT PETITION NO. 6267 OF 2007

Mrs. Shakuntala Hingorani. ..Petitioner.

Versus

Municipal Corporation of city of Pune
and Others. ..Respondents.

Mr. A. V. Anturkar, Senior Advocate with Mr. S. B. Deshmukh and Mr. Ajinkya Udhane for the Petitioner.

Mr. R. S. Khadpakar for Respondent No. 1 and 2.

Mr. Anil Sakhare, Senior Advocate with C. B. Nikte and Ms. Sneha Bhange for Respondent No. 3A and 3B.

Mr. Sanjeev Gorwadkar, Senior Advocate with Prasad Sarvankar for Respondent No. 5.

Mr. Surel S. Shah I/b V. H. Narvekar for Respondent No. 8.

Mr. Pravartak Pathak for Respondent No. 10.

Mr. K. R. Kulkarni, AGP for the Respondent-State.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **January 11, 2019.**

P. C. :

1. Heard the learned senior counsel and counsel appearing for the respective parties.
2. By consent, Rule is called out for final hearing.
3. The petition is filed seeking to quash and set aside the building permission and the commencement certificate dated 27th June 2007 granted by the Respondent-Corporation in favour of

Respondent No.3 for construction of a club house in plot No.410, sub plot No.1, South Main Road, Koregaon Park, Pune. According to the Petitioner, sub-plot No.1 where Respondent No.3 proposed to construct a club house, is in an open space reserved for recreational purposes as per the development plan. The Petitioner claims to be residing in plot No.9 in a building adjacent to said sub-plot no.1. The specific contention of the Petitioner is that proposed construction of the club house in open space is contrary to the development control regulations for the city of Pune.

4. On 29th October 2007, this petition was placed before the Division Bench for admission, and on that day after hearing the Petitioner as well as the Respondent-Corporation and Respondent No. 3, this Court granted rule. This Court also granted interim relief in terms of prayer clause (c) thereby granting temporary injunction restraining Respondent Nos.3 and 4 from carrying out any construction in pursuance of the building permission granted by the Respondent-Corporation on 27th June 2007 or otherwise for the construction of the club house on sub-plot No.1 of final Plot No. 410, south main road, Koregaon Park, Pune.

5. Respondent Nos. 3A and 3B thereafter approached this Court by filing Civil Application No.2027 of 2018 for modification of the

interim order referred to above. After hearing learned counsel appearing on behalf of the respective parties, Division Bench of this Court on 19th October 2018 issued direction to the effect that revised building proposal submitted by Respondent No.3A and 3B for construction of a meditation centre as a recreational amenity shall be dealt with by the Respondent-Corporation in accordance with the documents / material placed before it and the DCR. Further, the Respondent-Corporation was also directed to take decision within four weeks without being influenced by the order dated 29th October 2007 referred to above.

. Respondent Nos.3A and 3B claiming to be the owners of the property, submitted building plans to the Respondent-Corporation for construction of a meditation centre. These plans were sanctioned by the Respondent-Corporation. Admittedly, the construction of the meditation centre is completed.

6. Subsequent to the grant of commencement certificate, the Petitioner approached this Court by filing present civil application seeking temporary injunction against Respondent Nos. 3A and 3B from carrying out any construction on the subject open space in pursuance of the commencement certificate dated 5th November 2017 issued by the Respondent-Corporation. As stated above, during the pendency of

this application, construction is completed, however, Occupation certificate is not granted so far.

7. Mr. Anturkar, learned senior counsel for the Petitioner relying upon DCR 15.3.7 submitted that construction of the meditation centre is not in accordance with the DCR for Pune Municipal Corporation. It is specific case of Mr. Anturkar that proposal for construction is not by all the societies situated in the lay-out, and secondly the meditation center would be used by the persons other than those residing in the said layout.

. Mr. Sakhare, learned senior counsel appearing for Respondent Nos. 3A and 3B, on the contrary, took exception to the locus of Petitioner / Applicant to challenge construction of meditation centre on the sub-plot. Mr. Sakhare, in addition to this also submitted that all the societies in the layout have approved for the construction of the meditation center.

8. So far as the *locus* of the Petitioner is concerned, Mr. Anturkar relied upon the decision of this Court in Down Mangor Valley v. Mormugao Municipal Council [2002 Vol104 (2) Bom. L. R. 564] and the decision of the Apex Court in Esha Ekita Apartments CHS Ltd v. Municipal Corporaton of Mumbai [(2013) 5 SCC 537]. Relying upon

these decisions, Mr. Anturkar submitted that the Petitioner / Applicant being resident of the neighborhood, is aggrieved by the unauthorized construction of meditation centre carried out by Respondent No. 3A and 3B and is entitled to invoke the jurisdiction of this Court.

. There is no dispute that the Petitioner as a neighbour has a right to challenge the construction of unauthorized construction. But the present case is not about unauthorised construction. It is not the case of the Petitioner/Applicant that construction of meditation centre is without obtaining prior permission of the Respondent-Corporation. As a matter of fact, the commencement certificate is granted by the corporation and the construction is already completed. The construction of meditation centre, therefore, cannot be construed as unauthorised one. What the Petitioner / Applicant is challenging is the user of meditation centre by contending that residents other than the persons residing in the said layout would use the said meditation centre.

9. While granting permission, the Respondent-Corporation is supposed to see whether the proposed construction is in accordance with the DCR. So far as the user of meditation centre is concerned, we do not find any restriction in the DCR which would restrict its user exclusively for the residents of the layout. The only

restriction is in clauses (5) and (7) of DCR 15.3.7 which only contemplates that proposal for construction is to be filed by the owner/ owners and shall be for the beneficial use of owner / owners.

. The conjoint reading of clauses 5 and 7 makes it clear that the proposal for construction must come from owner / owners or society / societies or the federation of societies and it should be for the beneficial enjoyment of their members. Other than this restriction, there is no restriction to the effect that it would be exclusively used only by the members of the layout. An undertaking is to be submitted to the authority agreeing to condition Nos. 5 and 6 which reads thus :

"5. The proposal for the construction of such structure should come as a proposal from the owner/s, owners' society / societies or federation of owners societies and shall be meant for the beneficial use of the owners / members of such society / societies/ federation of societies.

6. The remaining area of the recreational open space shall be kept open to sky and properly accessible to all members as place of recreation, garden or a playground"

. The Petitioner though residing in the neighborhood of subject plot, cannot be said to be interested in the user of proposed meditation centre constructed on the recreation plot. This is one more reason why we opine that the Petitioner cannot object to its user by general public.

10. The reliance placed by Mr. Anturkar on the decision of Apex Court in *Esha Ekita Apartments CHS Ltd (supra)* is not of any succour to him since the Apex Court while delivering the judgment was dealing with illegal and unauthorised construction which was violating the municipal laws and in this background it was held that it affected the fundamental and constitutional rights of other persons. This is not the situation here.

11. Taking totality of the facts and circumstances of the case into consideration and for the reasons recorded above, we are not inclined to entertain this writ petition and the same is accordingly dismissed. Rule is discharged.

12. In view of the dismissal of the writ petition, civil applications taken out in this writ petition no more survive and the same are accordingly dismissed.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]