

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

WRIT PETITION Ld. NO. 13 OF 2019

Radius Infra Holdings Pvt. Ltd.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Dr. Virendra Tulzapurkar, Senior Advocate with Mr. Viram Nankani, Senior Advocate with Mr. Vibhav Krishna, Sajit Surana, Mr. Samit Shukla, Ms. Saloni Shah, Antesham Khatri I/bDSK Legal for the Petitioner.

Mr. Milind More, AGP for the Respondent-State.

Ms. Sheetal Metkar for MCGM.

Mr. Kshitij Kadam I/b Rustamji & Giwala for Respondent No. 5 to 7.

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

Date : **February 6, 2019.**

P. C. :

1. Heard Dr. Tulzapurkar, learned senior counsel for the Petitioner, Mr. More, learned AGP for the Respondent-State, Mr. Kadam, learned counsel for Respondent Nos.5 to 7 and Ms. Metkari learned counsel for the Respondent-Corporation.

2. Rule. Respondents waive service. Considering the narrow controversy involved in the matter, the same is forthwith taken up for final disposal.

3. The IoD was granted to the Petitioner and Respondent Nos.5 to 7 on 14th January 2016 by Respondent Nos.3 and 4. The challenge in this petition is to the incorporation of condition No. 13.

The said condition No. 13 incorporated in the IoD reads as follows :

“13) That the NOC from the Collector (M.S.D.) shall be obtained before asking for approval of any FSI component for the proposed building”

4. The issue is no more *res integra*. The Division Bench of this Court had an occasion to deal with the said issue in the case of Hiren Bharani vs. State of Maharashtra decided on 5th October 2006 in Writ petition No. 3119 of 2003. A circular was issued by the the State Government to the Municipal Corporation directing the Municipal Corporations to incorporate condition of obtaining NOC from the Collector for the proposed development. The Division Bench held that the said Circular dated 31st October 2001 to the extent it directs the occupants of the land to produce NoC from the Collector is without authority of law.

6. The issue similar to the issue involved in this petition had also arisen in Writ Petition No.1837 of 2015. The Division Bench of this Court relying upon its earlier decision in Hiren Bharani (supra) directed the Respondent-Corporation not to insist of the Petitioner's complying with the similar condition mentioned in the IoD.

7. The IoD in this case was granted on 14th January 2016. Thereafter CC was granted on 9th November 2017, which is in force as

on today. Therefore, the petition must succeed. Accordingly, we dispose of this petition by passing following order :

[a] Respondent No. 3 and 4 are directed not to insist on the Petitioner's complying with condition No. 13 in IoD referred to hereinabove.

[b] The Corporation is directed not to object to the Petitioner's construction being carried out in consonance with the terms and conditions of the CC granted on the ground that condition No. 13 stated hereinabove is not complied with.

[c] We also make it clear that we have made no adjudication on the question of title claimed by the Petitioner to the subject property.

[d] Rule is partly made absolute in above terms.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]