

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2878 OF 2019**

Estonia Co-operative Housing Society Limited... **Petitioner**
versus
The Municipal Corporation and Ors. ... **Respondents**

Mr.Vineet Naik, Senior Counsel a/w
Mr.Amogh Singh, Laxminarayan Shukla
i/b M/S Legal Vision for the Petitioner.

Ms.Vandana Mahadik for MCGM.

Mr.Kedar Dighe, AGP for State.

Mr.V.B.Chavan, Assistant Engineer
(Building Construction), Western Suburb
present.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- OCTOBER 14, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner is seeking to quash and set aside an E-tender published on 16th August, 2019.

2. Prayer clauses (a) and (b) of the writ petition are as under:

(a) that this Honourable Court may be pleased to admit the Petition and call for the records and file pertaining to the sanction bearing No.CHE/021677/DPWS/P&R Dated 27th October, 2016, proposal bearing

No.CHE/024771/DPWS/P&R Dated 19th November, 2016 and proposal dated No.CHE/012347/DPWS/P&R Dated 12th September, 2016,

(b) That after calling for the records of the sanction bearing No.CHE/021677/DPWS/P&R Dated 27th October, 2016, proposal bearing No.CHE/024771/DPWS/P&R Dated 19th November, 2016 and proposal dated No.CHE/012347/DPWS/P&R Dated 12th September, 2016 this Hon'ble Court may be pleased to examine the legality and validity of the said sanction and thereafter may be pleased to quash and set aside the said sanctions bearing No.CHE/ 021677/DPWS/P&R Dated 27th October, 2016, proposal bearing No.CHE/024771/DPWS/P&R Dated 19th November, 2016 and proposal dated No.CHE/012347/DPWS/P&R Dated 12th September, 2016."

3. The argument of the petitioner's senior counsel Mr.Naik is that the amenity open space is a demarcation/reservation and that cannot undergo any change. If today the amenity open space is not understood as a space open to sky and forever unbuilt, but a community centre or a welfare centre, which is an enclosed area, then such modification must undergo the required process under Sections 31 and 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "**the MRTP Act**"). He submits that amenity open space is a definite designation or reservation, and if, despite this certainty, a community hall or a community centre is permitted, this means that the essential reservation undergoes

a change; and without that change being effected in the development plan, an E-tender could not have been issued.

4. Apart therefrom, there are several other community centres and welfare centres in the area and one more was not required. The petitioner could have objected to the course adopted had an opportunity been given to it.

5. Further, the petitioner cannot be compelled to give up something from its entitlement and then be subjected to such development within its vicinity. That would affect a free, open and unhindered or unobstructed access to the petitioner's property. Now the access to the community centre would be through the petitioner's property and that is an additional ground on which we should interfere with the process.

6. Mr.Naik's argument cannot be accepted for more than one reason. All the arguments are premised on the basis that there is a certain designation/reservation on a development plan and that development plan reservation can be taken to only one logical conclusion consistent with such a designation/reservation. Any alteration therein would require a whole process; particularly, to effect a modification in the development plan.

7. However, the averments in the writ petition are enough to reject such an argument. In para 1 of the writ petition, the petitioner says that it is a society of flat purchasers registered under the Maharashtra Co-operative Societies Act, 1960. There is a residential complex known as “Hiranandani Heritage”. That was developed in a layout approved and sanctioned by the Municipal Corporation of Greater Mumbai. The petitioner society is established after the occupation certificate was procured by the then developer. The petitioner is representing the Estonia Building residents.

8. The land initially was in Industrial Zone which was later on converted into Residential Zone by a permission granted on 28th March, 2005. There were conditions imposed by the first respondent while changing user of the land from industrial to residential. Condition No.6 says that the area admeasuring about 2961.36 was reserved as additional Recreation Ground and area admeasuring about 2221.02 as amenity space. Thereafter, as per new notification dated 14th May, 2007, while sanctioning the layout from industrial to residential, a condition was imposed to reserve the 20% area out of the total plot as Amenity Open Space. While developing such layout and as per the sanctioned plans, a plot of land bearing C.T.S. No.27A admeasuring about 3864.4

sq.mtrs. and C.T.S. No.13A/b admeasuring about 2059 sq.mtrs, in all land admeasuring about 5923.4 sq.mtrs., was handed over to the Municipal Corporation of Greater Mumbai as "Amenity Open Space Plot". This was in consonance with the permission and circular. The plot was acquired and possession of the same was also handed over to the Municipal Corporation of Greater Mumbai as per Development Control Regulations. The Amenity Open Space plot is away from the main road. There is no independent access to it save and except over a 18.5 meters DP Road which is proposed under the Development Plan 1991. There was no direct and independent road or access to the said amenity plot in actual existence. Respondent No.1, while sanctioning the layout, has therefore imposed a condition in the commencement certificate/ Intimation of Disapproval (IOD) on the petitioner to provide a temporary right of way of 12 meters wide road from the internal layout of the petitioner until respondent No.1 constructs the 18.5 meters DP Road (and which would give direct and independent access to the said amenity plot).

9. Para 5 of the writ petition reads as under:

"5. The Petitioner states that said Amenity Open Space plot is away from road and there is no independent access to the same save and except 18.5 mtrs DP Raod which is proposed under the Development Plan 1991. Petitioner states

that as there was no direct and independent road access to the said amenity plot in actual existence (though proposed since 1991 in development plan but not constructed by Respondent No.1), the Respondent No.1 while sanctioning the layout has imposed conditions in IOD to provide a temporary right to way (of 12:00 mtrs wide road) from internal layout of Petitioner's till the Respondent No.1 construct the 18.3 Mtrs DP road which would be direct and independent access to the said amenity plot. Petitioner states that said conditions are duly mentioned in the permission issued U.No.CHE/2655/DPWS/P&R dated 28/03/2005 annexed at Exhibit A herein. Petitioner states that as condition was imposed in said permission and it was assured that construction of 18.3 mtrs DP road may not taken much time, temporary access within the layout was granted as temporary right to way to the said amenity plot. Petitioner states that it was specifically agreed that said right to way shall be for limited period of time and shall come to an end after the said 18.3 DP road as proposed for access (to the knowledge of the Petitioner reserved since 1967) is developed by the MCGM/Respondent No.1. Petitioner states that said understanding was reduced in writing and agreement dated 17th March, 2012 was executed. Hereto annexed and marked **Exhibit-"D"** is the copy of the agreement dated 17th March, 2012. Petitioner states that said temporary access is duly shown in the layout of the Petitioner. Hereto annexed and marked **Exhibit- "E"** is the copy of the sanction layout plan showing the said right to way."

10. Now, the petitioner says that this plot styled as Open Amenity is not being or proposed to be developed by the

Municipal Corporation for the purpose of which it was reserved, that is Amenity Open Space.

11. There is a marked difference between the phrase and term “amenity space” and “amenity open space”. It can never be contended that amenity space is always only an open area, permanently unbuilt or open to sky, for amenities by themselves are inclusive concepts. In the MRTP Act, the word “amenity” means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex etc. and include other utility services and conveniences. Now, a recreation ground is not the same as a playground. Playground is a special word. The whole ground is kept open to sky whereas a recreation ground allows the construction of a clubhouse or a community centre and leaving rest of the area open for recreation. There is a difference between a garden, a playground, a sports ground, a recreation ground and open spaces. Each of these are amenities. That any such amenities, therefore, have to be accessed through some internal road and until the development plan road is ready completely and fully by itself does not mean that the process initiated by the Municipal Corporation to obtain the amenity is illegal or interferes with any right of the petitioner in respect of its property, which is fully developed. Neither the right to develop

the property nor to enjoy is presently interfered with. Should the amenity be laid and constructed completely and for that to be accessed, there is any obstruction or interference in the right of way to which the petitioner is entitled to or any internal access which the petitioner exclusively claims, that is no ground or reason to interfere with the E-tender process. The E-tender process is to obtain the amenity and for use of the residents of the larger area. That there is more than one welfare centre in the area is also no ground to interfere with the said process. There is no requirement to modify the plan and, therefore, Sections 31 and 37 have no application as is evident from the narration in the petition to which we have made detailed reference hereinbefore.

12. It is, therefore, clear that each of the arguments canvassed before us have no merit and there is no right vesting in the petitioner nor can the petitioner object to the whole process when the Municipal Corporation is desirous of extending an amenity to the residents of the area in question.

13. The writ petition is entirely misconceived and it is dismissed. No costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)