

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 4053 OF 2018

Saptarshi Sankul Co-op Housing Societies' Association
Ltd .. Petitioner

Versus

Slum Rehabilitation Authority & Ors. .. Respondents

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- Mr. Amir Arsiwala a/w Sujit Pathak, Yash Jariwala & Zaid Mansuri for the Petitioner
 - J.G. Aradwad (Reddy) for Respondent No. 1
 - Mr. A.Y. Sakhare - Sr. Advocate, Mr. Rohan Mirpuray and Sheetal Metkari for MCGM
 - Mr. Pravin Samdani - Sr. Advocate, Karl Tamboly, Bhushan Deshmukh, Dhawal Mehta, Nitesh Ranavat, Disha Shetty and Akash Lodha i/by Wadia Ghandy & Co for Respondent No. 3
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JULY 23, 2019.

ORAL JUDGMENT (Per Akil Kureshi, J.)

1. The petitioner is an association of Co-operative Housing Societies. The petitioner espouses the cause of several Co-operative Housing Societies situated in Ovari Pada area, H.M. Road, Dahisar (E), Mumbai. The main prayer of the petitioner is for a direction to the respondents for withdrawing the earlier order of stop work issued against the developer of Slum Rehabilitation Scheme. The petitioner has

further prayed for quashing and setting aside the approval granted by respondent No. 1 - Slum Rehabilitation Authority ("SRA" for short) on 31.10.2017 to the Layout Plan submitted by respondent No. 3 for the plot bearing CTS No. 1779.

2. Brief facts are as under:-

The petitioner is an association of several Co-operative Housing Societies situated in the above mentioned area. The dispute is with respect to a proposed DP road which is part of the development being carried out by respondent No. 3 pursuant to the Slum Rehabilitation Scheme duly sanctioned by the Competent Authority and the construction being carried out in tune with the said scheme.

3. Respondent No. 3 is a limited liability partnership firm and has undertaken the task of slum rehabilitation on the plot in question namely C.T.S. No. 1779. It is an admitted position that this development is taking place on a portion of the proposed DP road which the petitioner asserts, should be left open and construction if any carried out on such portion should be demolished.

4. At the outset, we may record a few relevant dates and events:-

- The Development Control Regulations for Greater Mumbai were brought into effect on 20.2.1991 (hereinafter referred to as the "1991 DP").
- In August 1977, land in question was declared as slum under Section 4 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the "Slum Act"). Respondent No. 3 submitted the proposal for slum rehabilitation scheme on 24.5.2012. On such date, there was no proposal for construction of 13.40 meter wide DP road. On 25.2.2015, respondent No. 2 i.e Municipal Corporation of Greater Mumbai issued a notification publishing a draft Development Plan for the Greater Mumbai (hereinafter referred to as the "Draft DP 2034". This draft Development Plan contained a proposal for 13.40 meter wide road part of which would pass through the land being developed by respondent No. 3 as per slum rehabilitation scheme.
- It is undisputed that as per the transitional policy,

the prescription contained in original 1991 DP or one contained in draft DP 2034 whichever is more stringent would prevail for the purpose of development of land.

- The draft DP 2034 was presented by the Municipal Corporation to the State Government. On 23.4.2015, the State Government issued a notification calling upon for a revised draft Development Plan to be submitted after further inquiries. Relevant portion of this notification reads as under:-

Directives

" The draft of Development Plan published in Government Gazette on 25.2.2015 by Municipal Corporation of Greater Mumbai should be republished after the thorough inquiry of all the mistakes as per the circumstances at the site, its merit (quality) and inspecting it from the point of view of planning and making corrections in legal matters and incorporating corrections accordingly and thereafter, fulfilling compliance of provisions under Chapter 3 of Maharashtra Regional and Town Planning Act 1966 and take prior permission of General Assembly as per Section 26 and within four months term republish it for the suggestions / objections of the citizens.

The above directive shall be implemented from the date of the order hereof."

- On 28.4.2015, Letter of Intent ("LOI" for short) was issued by the SRA in favour of respondent No. 3. The slum rehabilitation scheme was sanctioned subject to certain conditions.
- On 11.6.2015, intimation of Approval of rehab building No. 1 was issued.
- On 27.5.2016, the Municipal Corporation published a revised draft Development Plan (hereinafter referred to as the "Revised DP 2034") inviting suggestions and objections from residents. This draft Development Plan did not contain any proposal for the said 13.40 meter wide road.
- On 7.8.2017, Municipal Corporation submitted revised DP 2034 to the Government for sanction under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "MRTP Act"). This revised draft did contain a proposal for the said 13.40 meter wide DP road.
- In the meantime, building permission was granted to respondent No. 3 for five different towers on the land in question . These permissions were issued between 11.6.2015 to

16.12.2016. The Government issued a notification dated 8.5.2018 granting sanction to DP 2034. This sanctioned DP 2034 also contained the proposal for 13.40 meter wide DP road.

- The Competent Authority issued a stop work notice to respondent No. 3 on 31.5.2018 which was subsequently withdrawn on 21.6.2018.

5. On the basis of such events, the learned counsel for the petitioner submitted that the construction carried out and being carried out by respondent No. 3 on an area which forms part of 13.40 meter wide DP road under the sanctioned plan is wholly unauthorized and illegal. He submitted that the proposal for the road was contained in the very first draft Development Plan published by the Municipal Corporation as far back as on 25.2.2015. Respondent No. 3 had to carry out the construction only subject to the proposals contained in this draft Development Plan. The LOI was also issued subject to this condition. No building construction permission could have been issued contrary to the said proposal and the conditions contained in LOI. He submitted that the entire development is thus wholly unauthorized. Further construction should be stopped and construction already

carried out should be demolished.

6. The respondents have opposed the petition. The case of respondent No. 1 is that the entire scheme has been sanctioned as per the rules and regulations and the permission has been granted in conjunction with 1991 DP and is in no way contrary to any of the conditions contained in draft DP 2034 at the time when the sanction was granted.

7. The Municipal Corporation of Greater Mumbai has also opposed the petition. A detail reply has been filed in pursuant to the directions issued by this Court on 4.4.2019. The said reply has been filed after the officers of the BMC along with SRA officers had visited the site.

8. Respondent No. 3 of course has put up strongest resistance to the petition. The case of respondent No. 3 in the affidavit-in-reply and presented before us through the learned counsel in brief is that the SRA scheme was sanctioned at a time when there was no proposal for DP road. The LOI was also issued at a time when no such

proposal existed on record. Final development permission was also granted long before the Municipal Corporation proposed such DP road in the revised Development Plan. Subsequent sanctioning of such plan by the Government, would not change this position. Respondent No. 3 cannot be made to submit to the proposals contained in Development Plan which came into existence later on. In the meantime, pursuant to the sanctioned scheme and sanctioned plans, substantial development had already taken place. It was pointed out that presently as many as four towers are at advance stage of construction. Construction of as many as thirteen floors has been completed. Respondent No. 3 has the responsibility to complete such construction and rehabilitate the evicted slum dwellers. Our attention was drawn to the Clause (20) of the Notification issued by the Government of Maharashtra on 8.5.2018. This clause (20) reads as under:-

"(20) If the SRS is sanctioned considering proposals of 1991 Development Plan and also by rearranging the reservations and road proposals of 1991 D.P. and such sanction is still valid and if new reservations are proposed in 2034 D.P. on such land then new reservations of 2034 D.P. shall be deemed to be deleted. In such cases, the rearranged proposal as per sanctioned SRS if any shall

prevail over 2034 D.P."

9. Both sides have offered their interpretations to this clause which is the focal point of the entire controversy and to which we would make more detail reference at a later stage.

10. Having thus heard the learned counsel for the parties and having perused the documents on record, it can be seen that the entire issue would hinge on the question whether at a time when the slum rehabilitation scheme was sanctioned and at a time when the building permission was being granted, was there any prescription even in a draft Development Plan for the said 13.40 meter wide road. If the answer to this question is in the affirmative, the petitioner may have several grievances to make. On the other hand, if the answer to this question is in the negative, Clause (20) of the said notification dated 8.5.2018 would protect respondent No. 3.

11. Chapter III of the MRTTP Act pertains to development plan. Part (a) of Chapter III contains provisions concerning declaration of intention, preparation, submission

and sanction to Development plan. Part (b) pertains to procedure to be followed in preparing and sanctioning Development plans. Section 23 contained in part (b) pertains to declaration of intention to prepare Development plan. As per sub-section (1) of Section 26, subject to the provisions of Section 21, a Planning Authority or Appropriate Officer would not later than two years from the date of notice published under Section 23, prepare a draft Development plan and publish a notice in the Official Gazette inviting objections and suggestions within 30 days from the date of the publication. Section 28 of the MRTTP Act pertains to objections to draft Development plan and makes provision for considering suggestions or objections which may have been received in relation to the draft Development plan. Section 30 of the Act pertains to submission of draft Development plan. Sub-Section (1) of Section 30 provides that the Planning Authority or as the case may be, the Appropriate Officer would submit a draft Development plan along with list of modifications or changes made in the draft Development plan under sub-section (4) of Section 28 to the State Government for sanction within a period of six months

from the date of publication of the notice in the Official Gazette regarding its preparation under Section 26. Section 31 of the Act pertains to sanction to draft Development plan. Sub-section (1) of Section 31 provides that subject to the provisions of the said Section and not later than six months from the date of receipt of such plan from the Planning Authority or the Appropriate Authority, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modification as it may consider proper, or return the draft Development plan to the Planning Authority or the Appropriate Officer as a case may be for modifying the plan or refuse to accord sanction and direct the Planning Authority or the Appropriate Officer to prepare a fresh Development plan.

12. We have noticed that respondent No. 3 had submitted a proposal for slum rehabilitation scheme on 24.5.2012 and the LOI was issued by the SRA in favour of

respondent No. 3 under which the scheme was duly sanctioned. We have also noticed that the original draft DP 2034 which was published on 25.2.2015 inviting objections, though did contain a proposal for 13.40 meter wide DP road, the Government of Maharashtra did not approve this draft proposal and instead, on 23.4.2015, asked the Corporation to submit revised draft Development Plan for objections and suggestions. We have reproduced the relevant portion of this notification. The title of the concluding portion of this notification is 'Directives'. The Government of Maharashtra in concluding portion of this notification had recorded that the Corporation should carry out thorough inquiry and carry out necessary corrections and also after fulfilling the compliance of the provisions of Chapter 3 and also after taking proper permission of General Assembly as per Section 26 of the said Act and thereafter republish a fresh plan for suggestions and objections of the general public. Thus, by virtue of the said notification dated 23.4.2015, efficacy or the very existence of the previous publication of the draft DP for objections from general public, did not survive. As on 23.4.2015, therefore, no draft plan even at

objection state was in existence. The revised draft DP was published only on 27.5.2016. Even this revised DP did not contain any proposal for 13.40 meter wide DP road. It was only thereafter on 7.8.2017 when the Municipal Corporation submitted its revised DP to the Government for sanction, after inviting objections and suggestions from the public that the proposal for the DP road was inserted. Thus, therefore, in clear terms between two important dates i.e 23.4.2015 when the Government directed the Corporation to submit a revised plan and till 7.8.2017 when the Corporation after inviting objections / suggestions and after considering them, submitted a revised draft plan to the Government, there was no proposal of a DP road of 13.40 meter width. All clearances for development under the slum rehabilitation scheme took place between these two dates namely 11.6.2015 and 16.12.2016. In view of this factual position, we may refer to the Clause (20) of the Government notification dated 23.4.2015. This Clause (20) provides that if the slum rehabilitation scheme is sanctioned considering proposals of 1991 Development Plan and also by rearranging the reservations and road proposals as per such DP and such

sanction is still valid and if new reservations are proposed in 2034 DP on such land, then new reservations of 2034 DP itself shall be deemed to be deleted. The plain effect of this clause is that if a scheme is sanctioned considering DP of 1991 and the sanction is valid when the proposed 2034 DP comes into existence and the development is opposed to the reservations envisaged in proposed DP of 2034, such proposals would not prevail. In other words, for such scheme the proposals contained in the proposed DP of 2034 would yield to the prescriptions contained in DP of 1991 as long as the conditions envisaged in Clause (20) are satisfied. The facts on record would show that all such conditions were satisfied. Respondent No. 3 as well as the official respondents are correct in contending that irrespective of the submission of the revised DP by the Corporation to the Government and irrespective of sanction of the draft Development Plan by the Government, the slum rehabilitation scheme of respondent No. 3 and the development undertaken by respondent No. 3 pursuant to such slum rehabilitation scheme and the building permissions granted, would not be disturbed. It is precisely

for this reason that the official respondents have suggested Government to drop the proposal of the DP road in the sanctioned DP of 2034. Be that as it may, in so far as we are concerned, we do not find that the petitioner has made out any case for interference. We have noticed that in sub-section (1) of Section 31 of the MRTP Act, upon the Planning Authority presenting a draft Development plan for sanction of the Government, the Government has multiple options. The Government chose the option of refusing to accord sanction and direct the Planning Authority to prepare a fresh Development plan. It is not a case where the Government had returned the plan to the Planning Authority for modifying it in any terms. It was a case of plain refusal to accord sanction coupled with the direction for preparation of a fresh development plan.

13. Learned counsel for the petitioner, however, vehemently contended that the proposals for reservations contained in the original draft DP Plan of 2034 submitted by the Corporation to the Government for sanction on 25.2.2015 prevailed all throughout and should have been taken into

consideration by the authorities while granting development permissions. In our opinion, this contention is fallacious. If we accept the contention of the learned counsel for the petitioner, great deal of dichotomy would arise. As noted, the draft Development plan presented by the Planning Authority to the State Government for sanction, was considered by the Government. The Government returned the plan for preparation of a fresh plan. The Government directed that the draft Development plan should be republished after taking prior permission from the General Assembly and thereafter inviting suggestions and objections of the citizens. Firstly, we have already recorded our finding that upon the draft Development plan being presented before the Government, in exercise of powers under sub-section (10) of Section 31 of the MRTP Act, the Government refused to accord sanction, instead directed the Planning Authority to prepare a fresh Development plan. The legal consequence of this order of the Government would be that the draft Development plan prepared by the Planning Authority did not exist. Even otherwise, it can be envisaged that the draft Development plan, subsequent draft

Development plan published by the authority inviting objections and suggestions of the citizens and revised draft Development plan which may be presented before the Government for sanction, may have conflicting provisions. If the contention of the learned counsel for the petitioner is accepted, the authorities granting building construction permission may have to comply with such conflicting provisions which is not possible.

14. In view of the above, the petition is dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]