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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8080 OF 2019**

The Kalyan Janata Sahakari Bank Ltd.,
Kalyan Multistate Scheduled Co-op Bank Petitioner.

V/s

The Kalyan Dombivali Municipal
Corporation, Kalyan and Ors. Respondents.

Mr. Shailendra Kanetkar i/b Mr. V.H. Narvekar a/w Mr. Aadesh Patil
for the Petitioner.

Mr. Sandip D. Shinde for Respondent Nos. 1 and 2.

Mr. Y.M. Pendse for Respondent Nos. 3 to 5.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] Heard Mr. Kanetkar, learned Counsel for the Petitioner, Mr. Shinde, learned Counsel for Respondent Nos. 1 and 2 and Mr. Pendse, learned Counsel for Respondent Nos. 3 to 5.

2] Respondent-Municipal Corporation on 3/1/2018 passed an order thereby declaring that the Petitioner-Bank has diverted use of about 1500 sq.ft of parking area for other use viz construction of toilets, construction of a xerox shop and installation of server room and battery cabins. Since existing sanctioned parking area is reduced, it

appears that certain flat owners of the said Building approached the Respondent- Municipal Corporation for aforesaid violation, resulting into issuance of notice dated 10/11/2017 by the Corporation. The said notice preceded with spot inspection carried out by the officials of the Corporation on 8/11/2017. Having noticed that the Petitioner has illegally diverted use of part of the parking area, vide order impugned, Petitioner was directed to remove the said illegal construction and restore the position as was existing in accordance with the sanctioned plan. It was further threatened to the Petitioner that in case if the Petitioner failed to comply with the same, illegal construction will be removed by the officials of the Corporation.

3] Petitioner, feeling aggrieved, preferred Regular Civil Suit No.25 of 2018 on the file of Civil Judge, Junior Division, Kalyan thereby praying that the aforesaid order dated 3/1/2018 is illegal and contrary to provisions of the Corporation and the Town Planning Act. Temporary injunction was prayed, restraining the Respondent- Municipal Corporation from acting on the said notice or taking any action against the Petitioner based on the order dated 3/1/2018. The learned Trial Court vide order dated 19/10/2018 was pleased to reject

the said application which was confirmed in appeal preferred by the Petitioner vide impugned order dated 2/4/2019 passed by the learned District Judge, Kalyan. Hence, this Petition.

4] Mr. Kanetkar, learned Counsel appearing on behalf of the Petitioner, while assailing the aforesaid concurrent findings, would invite attention of this Court to the temporary use of the part of parking area. According to him, construction of server room or battery room is ancillary to the use of parking and is permissible, as the Petitioner has exclusive right over the parking area. According to him, construction of server room or battery room or operation of xerox unit cannot be termed as illegal activity and that being so, orders of the Courts below refusing injunction are not sustainable. He would try to substantiate his aforesaid contentions based on the recitals in the Deed of Declaration and Deed of Conveyance. While inviting attention of this Court to the provisions of Section 53 of the MRTP Act, contentions of the learned Counsel for the Petitioner are, already appeal against the order of demolition is pending with the State Government wherein order of status quo is operating. In that view of the matter, it is necessary that the impugned orders passed by the

Courts below are liable to be upset by granting injunction. By inviting attention of this Court to the provisions of sub-section (5) of Section 53 of the MRTP Act, learned Counsel would urge that the Petitioner has every right to seek regularization, particularly when under Development Control Regulations, use of parking in developed property for creating server room or battery cabins cannot be counted or calculated in the maximum sanctioned or available FSI. The learned Counsel would then urge that in case if injunction is not granted, Petitioner will suffer irreparable loss.

5] Mr. Kanetkar would also claim that Respondent Nos. 3 to 5 have malafidely lodged the complaint with the Respondent-Corporation. According to him, rivalry in the Directors and flat owners appears to be behind the cause for issuing notice, which fact this Court needs to appreciate.

6] While countering the aforesaid submissions, learned Counsel for the Respondent-Municipal Corporation would oppose the claim, as according to him, vendor of the present Petitioner has exhausted the complete FSI as was available on the plot area. According to him,

even if there is dedicated parking space purchased by the Petitioner, that itself will not permit the Petitioner to divert use of the same for any other purpose. According to him, even if assuming without admitting that there are temporary structures installed by the Petitioner, still fact remains that for the same also, there needs permission from the authority. He would stress upon the point that, in any case, parking area cannot be diverted for any other use.

7] The learned Counsel appearing on behalf of private Respondents while opposing the submissions of the learned Counsel for the Petitioner would urge that whether the property belongs to Co-operative Housing Society is an issue already subjudice and that being so, it is not open for the Petitioner to claim that it has exclusive right over the parking area.

8] Considered rival submissions.

9] The diverted use as is claimed by the Petitioner is ancillary to the use of parking is without any lawful basis and as such, same is rejected.

10] In the Deed of Declaration, Petitioner alleged to have received parking area of 2650 sq.ft. As such, it is binding on the Petitioner who is a Multistate Co-operative Bank to use the said parking premises exclusively for its customers, employees etc. Fact remains that nature of activity carried out by the Petitioner i.e. banking activity which is also profit earning, involves visit of number of customers i.e. account holders, depositors etc. In that view of the matter and having regard to the fact that Petitioner is operating its Head Office from the suit premises, building control regulation does not permit the Petitioner to divert the use.

11] Apart from above, it is required to be noted that sanction of the structure purchased by the Petitioner includes aforesaid parking area. Same is in tune with the building bye-laws. Making adequate provision for parking in the developed area is statutory obligation on the vendor of the Petitioner who got sanction for development. As such, there is no scope for diverting use of parking area for any other purpose as Petitioner in law is duty bound to provide / maintain the same in accordance with sanctioned plan.

12] Apart from above, fact remains that the Petitioner appears to be pursuing its remedy before two parallel forums i.e. one in pending suit in which present orders are passed and the another in an appeal under the provisions of the MRTP Act, which he claims to be pending adjudication before the State Government in which he has claimed that there is an order of status quo passed almost two years back. Fact remains that if such appeal is preferred by the Petitioner, Respondent-Municipal Corporation has claimed to have not received any notice therein for more than two years from its pendency. Said act on the part of the Petitioner speaks sufficient as to the mode and manner in which the Petitioner is seriously pursuing the said remedy. Apart from above, order of status quo passed in the said appeal as is brought to my notice sans reasons.

13] Petitioner vide communication dated 18/12/2017 to the Respondent-Municipal Corporation thereby tendering modified building plan for sanctioning diverted use of parking area itself demonstrates that the Petitioner has diverted use of parking area. Fact remains that there is no sanction either temporary or otherwise from

planning authority for diversion of the use of parking area and in that view of the matter, both the Courts below were justified in rejecting the prayer for injunction.

14] Petitioner has also failed to demonstrate that additional FSI is available with it which can be used for regularization of his illegal use of parking area. In the aforesaid backdrop, having regard to the fact that there are concurrent findings against the Petitioner, there is absence of any sanction for diversion of use of parking area, in my opinion, no interference, for the reasons stated above, is called for. Petition as such fails and same stands dismissed.

15] At this stage, Mr. Kanetkar, learned Counsel for the Petitioner submits that since during pendency of Exhibit-5 application, an order of status quo was in operation which is continued till date, this Court may continue the same for a period of four weeks from today so as to enable the Petitioner to approach the Apex Court.

16] Prayer is opposed by the learned Counsel for the Respondent-Municipal Corporation so also by the learned Counsel for the private

Respondents on the ground that short availability of parking space has resulted in inconvenience for smooth flow of traffic and also occupiers.

17] Having regard to the fact that the order of status quo is claimed to be in operation for some time, the said order is directed to be continued for a period of two weeks from today.

18] This Court expects that Trial Court would decide the suit on its own merit.

(NITIN W. SAMBRE, J.)