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

WRIT PETITION NO.388 OF 2020

Deepak B. Joshi	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Dr.Milind Sathe, Senior Counsel with Mr.Saket Mone, Mr.Vishrant Tendulkar and Mr.Vishes Kalra i/b Vidhii Partners for the Petitioner.

Mr.Abhay L. Patki, Additional Government Pleader for the State – Respondent. No.1.

Mr.A.Y.Sakhare, Senior Counsel with Ms.Oorja Dhond i/b Ms.Aruna Savla for the Respondent No.2 to 4.

Mr.B.D. Kulkarni for the Respondent No.5.

**CORAM : R.D. DHANUKA &
V.G. BISHT, JJ.**

DATE : 3RD FEBRUARY, 2021.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the decision of the respondent no.2 and 3 dated 8th February, 2019 and 10th October, 2019 to keep the development potential of the said lands in abeyance to the extent of 516.64 sq. mtrs.

2. The petitioner has submitted a plan for construction of two buildings. The construction of building “B” is already completed as far

back in the year 2016. The petitioners are presently constructing building "A". There was additional FSI available to the petitioner during the construction of building "A" on the plot. It is the case of the petitioner that the petitioner has already utilized the additional proportionate FSI while constructing building "B". The respondent no.5 thus would not be entitled to any portion of the additional FSI.

3. In view of the complaint made by the respondent no.5 – society, the Municipal Corporation passed the impugned order dated 8th February, 2019 keeping 516.64 sq.mtrs.of BUA in abeyance till the dispute between the plot owner / applicant and the occupants of building "B" is resolved amicably or through legal course of action which may be accepted formula in this case.

4. It is the case of the petitioner that in view of section 46 of the MRTP, the Planning Authority shall have due regard to the provisions of any draft or final plan or proposal while considering the application for permission for development. Dr.Sathe, learned senior counsel for the petitioner submits that in view of the said provision, even if there was any complaint made by the respondent no.5 – society, the Municipal Corporation could not have kept the BUA admeasuring 516.64 sq.mtrs. In abeyance till the disputes between the petitioner and the respondent no.5 -society is resolved in view of the petitioner being owner of the said plot.

5. The respondent no.5 – society had applied for deemed conveyance under section 11 of MOFA before the Competent Authority. Since the construction of building “A” was on going and for various other reasons, the Competent Authority rejected the said application filed by the respondent no.5 – society for deemed conveyance on the ground that the said application was pre-mature.

6. Learned counsel appearing for the respondent no.5 – society on the other hand submits that the Competent Authority has not rejected the application for deemed conveyance made by the respondent no.5 – society on merits but only on the ground that the same was pre-mature. He submits that the petitioner cannot be allowed to claim any right over the said BUA admeasuring 516.64 sq. mtrs.

7. We are of the opinion that since the respondent no.5 had made a complaint to the Municipal Corporation asserting the rights in the said BUA admeasuring 516.64 sq. mtrs., the respondent no.5 will have to adopt appropriate proceedings for adjudication of their alleged rights in the said area and not the petitioner.

8. We accordingly pass the following order :-

a). The respondent no. 5 – society is at liberty to file appropriate proceedings for adjudicating upon its alleged rights for the said BUA admeasuring 516.64 sq. mtrs. against the petitioner

and the Corporation.

b). If no injunction is obtained by the respondent no.5 from the appropriate Court against the petitioner from utilizing 516.64 sq. mtrs.of BUA within four weeks from today, the Municipal Corporation shall permit the petitioner to carry out construction by utilizing the said BUA admeasuring 516.64 sq. mtrs. and shall not withheld the plan on the ground of complaint filed by the respondent no.5, within two weeks thereafter.

c). The writ petition is disposed of in aforesaid terms.

d). There shall be no order as to costs.

(V.G. BISHT, J.)

(R.D. DHANUKA, J.)

Vasant
A. Idhol

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by Vasant A. Idhol
Date: 2021.02.03
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