

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 6507 OF 2017**

VASANT
ANANDRAO
IDHOL

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1. Anwar Hussain J. Thim	)	
Age : Years, Occ. Business	)	
Having office at : 310, Yusuf Building,	)	
3rd Floor, Veer Nariman Road, Fort,	)	
Mumbai – 400 023	)	
 2. M/s.Amit Builders,	)	
through it's Partner	)	
Mr.Kishor Govind Pate,	)	
Age : 56 Years, Occ. Business,	)	
Having office at : 1902, Amit House,	)	
Bajirao Road, Sadashiv Peth,	)	
Pune – 411 030	)	 Petitioners

VERSUS

1. State of Maharashtra,	)	
through Principal Secretary,	)	
Urban Development Department,	)	
Having office at Mantralaya,	)	
Mumbai – 400 032	)	
 2. The Director, Town Planning,	)	
Having office at : Town Planning & Valuation)	)	
Dept., Central Building, Shivajinagar,	)	
Pune – 411 001	)	
 3. The Municipal Corporation of the	)	
City of Nashik,	)	
Having office at : Rajiv Gandhi Bhavan,	)	
Sharanpur Road, P.O.Box No. 12,	)	
Nashik – 422 002, through its Commissioner)	)	 Respondents

Mr.Girish S.Godbole, i/b. Ms.Shrushti Tulpule for the Petitioners.

Mr.A.I.Patel, Additional G.P. a/w. Mr.A.A.Alaspurkar, A.G.P. for the State – Respondent nos. 1 and 2.

Mr.Murlidhar L. Patil for the Respondent no.3.

**CORAM : R. D. DHANUKA AND
KAMAL KHATA, JJ.**

**RESERVED ON : 29TH AUGUST, 2022
PRONOUNCED ON : 23RD SEPTEMBER, 2022**

JUDGMENT (Per R.D.Dhanuka, J.):-

Rule. Mr.Patel, learned Additional Government Pleader waives service for respondent nos. 1 and 2. Mr.M.L.Patil, learned counsel for the respondent no.3 waives service. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a declaration that the notification no. TPB 4312/CR-45/2012(I)/UD-11 dated 8th November, 2013 is not applicable to the petitioners.

3. The petitioners have also prayed for a writ of certiorari for quashing and setting aside Clause No.3 of the impugned notification dated 8th February, 2016 to the extent that it leads to a modification in Development Control Regulations. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. On 23rd July, 2007, the State of Maharashtra declared its housing policy in order to facilitate affordable housing in urban and rural areas and create an adequate housing for Lower Income Group (LIG) and

Economically Weaker Section (EWS) on ownership basis or rental basis vide resolution dated 17th July, 2008 and directed the Municipal Corporations to modify their sanctioned Development Control Regulations to include new regulations for the purpose of inclusive housing.

5. On 22nd December, 2007, the petitioners entered into a Development Agreement in joint venture in respect of the said property for Survey No. 1/1 + 1/2 + 1/4. The said Development Agreement was registered in the office of the Joint Sub-Registrar, Nashik – 5 on 28th March, 2008. On 24th December, 2009, the petitioners entered into a Development Agreement in joint venture with the owners of the said property for Survey No. 1/3 + 1/5 which was duly registered on 1st November, 2010 with the Deed of Confirmation.

6. On 27th April, 2012, the petitioner no.2 applied to the Chief Fire Officer, Nashik Municipal Corporation for obtaining the Fire N.O.C. for entire project/layout with building height of P + 12 floors (39.0 mtrs.) and the provisional Fire N.O.C. for the 39 meters. On 27th April, 2012 the Chief Fire Officer, Nashik granted the provisional fire N.O.C. for the entire project/layout. On 5th June, 2012, the respondent no.3 granted sanction for the building construction plans and Commencement Certificate to the petitioner in respect of Survey No. 1/1 + 1/2 + 1/3 + 1/4 and 1/5 of Village Pathardi Shivar. This Commencement Certificate was provided for 4 buildings with Stilt + 4 floors and 16 buildings with stilt + 1 floor, having a total built up area of 19,820.78 sq.mtrs.

7. It is the case of the petitioners that the Commencement Certificate

was asked for entire land on 3rd October, 2011 and was granted for the entire layout for the purpose of residential development project. The land development charges required to be paid under section 124 of the MRTP Act were deposited by the petitioners for the entire land. The Condition No.3 of the Commencement Certificate provided that 'the commencement certificate for building permit shall remain valid for a period of one year commencing from date of its issue and thereafter it shall become invalid automatically'. On 8th November, 2013, the State of Maharashtra issued a notification incorporating Regulations for Inclusive Housing in the Development Control Regulations of Municipal Corporations having a population of 1 million or above, in exercise of powers under section 37(1AA)(c) of the MRTP Act, 1996.

8. It is the case of the petitioners that clause 4 of the said notification clearly provided that the said provisions shall be applicable prospectively and shall not be applicable to any housing scheme or residential development project wherein Commencement Certificate had been issued prior to the date of coming into force of these provisions and was valid on such date. On 13th May, 2013, the Executive Engineer of the Nashik Municipal Corporation issued a Part Plinth Completion Certificate to the petitioner no.2.

9. On 11th July, 2014, the petitioner no.2 obtained Environment Clearance N.O.C. required for the purpose of environmental clearance from the Nashik Municipal Corporation stating the maximum permissible potential of allowable F.S.I. and non allowable F.S.I. area of the entire project/layout viz. the basic F.S.I. area of 91,724 sq.mtrs. and non F.S.I. area of 43,924 sq.mtrs. alongwith permissible T.D.R. potential of 39,260

sq.mtrs. as per prevailing DC Rules. On 4th September, 2014, the petitioner no.2 obtained the required environmental clearance for constructing upon and utilizing the full development potential of the said plot as a fulfillment of condition no.33 in the commencement certificate dated 5th June, 2012. The petitioners applied for renewal of or revised commencement certificate for the said layout.

10. It is the case of the petitioners that on 11th September, 2014, clause no.2(e) of the said Regulations for Inclusive Housing was sought to be modified by the State Government and was modified subsequently on 3rd September, 2015. It is the case of the petitioners that since the application seeking renewal or revised commencement certificate was pending before the respondent no.3, the architect of the petitioners sent a letter dated 12th January, 2015 to the Town Planning Department, Nashik.

11. On 7th February, 2015, the Nashik Municipal Corporation through its Commissioner addressed a letter to the Principal Secretary, Urban Development Department, seeking his opinion. It was explained that the application of the petitioners for revised commencement certificate of the said plot/layout sought development by utilizing the full development potential of the entire plot/layout. It was queried in the said letter that since the balance potential sought to be utilized on the layout for which the building permission was already granted, was more than 4000 sq.mtrs., then whether the provisions of the Regulations regarding Inclusive Housing would be applicable.

12. It is the case of the petitioners that on 11th March, 2015, the Joint Director, Town Planning Department, Nashik Division, Nashik addressed

a letter to the Director, Town Planning, Pune clarifying that the said Regulations were applicable prospectively. Since the commencement certificate was already granted for the total area of the layout, the Regulations for Inclusive Housing were not applicable to the case of the petitioners. He opined that the built up area which was already sanctioned by the commencement certificate was of no consequence. What was of relevance was that the petitioners were granted a commencement certificate in respect of the total layout on 5th June, 2022 which was prior to the date of notification of incorporating the Regulation for Inclusive Housing i.e. 8th November, 2013. Since, clause no.4 of the said regulations were made applicable prospectively, there was no requirement for the petitioners to construct affordable housing tenements amounting to 20% of the basic zonal F.S.I. with respect to the said layout.

13. It is the case of the petitioners that on 18th March, 2015, the Director, Town Planning, Pune who was a statutory authority under the MRTP Act expressed his opinion to the Principal Secretary, Urban Development Department vide letter dated 18th March, 2015, concurring with the view of Joint Director, Town Planning Department, Nashik Division, Nashik explained in his letter dated 11th March, 2015.

14. It is the case of the petitioners that the State of Maharashtra however did not take any decision on the query raised by the respondent no.3 although the recommendation of the Joint Director, Town Planning Department, Nashik Division, Nashik as well as the Director, Town Planning Department, Pune were clear that the said Regulations were not applicable to the case of the petitioners. On 30th September, 2016, the State of Maharashtra informed the respondent no.3 to take appropriate

decision at its level by taking into consideration the Government directives etc.

15. It is the case of the petitioners that the petitioners thereafter approached the respondent no.3 on various occasions but it went in vain. On 7th August, 2015, the respondent no.3 granted revised commencement certificate to the petitioners in respect of the said properties bearing survey no. 1/1 + 1/2 + 1/3 + 1/4 and 1/5 of Village Pathardi Shivar in place of the previous commencement certificate dated 5th June, 2012 and approving the development of total built up area of 88,980.10 sq.mtrs. It is the case of the petitioners that the revised certificate was nothing but a replacement of earlier commencement certificate and was in continuance thereof.

16. On 8th February, 2016, the respondent no.1 issued a notice for the proposed modifications to the said Regulation dated 8th November, 2013 for Inclusive Housing under section 37(1AA) of the MRTP Act, 1996. It is the case of the petitioners that only sub clauses (a) and (e) of clause 2 was sought to be modified by virtue of the proposed modification.

17. On 8th February, 2016, in exercise of the powers conferred under section 154 of the MRTP Act, 1996 the respondent no.1 issued the impugned notification providing in clause 3 that if a revised permission for sanction has been applied for and the balance potential of the built up area exceeds 4000 sq.mtrs. then the regulations for Inclusive Housing shall be applicable to such cases irrespective of a commencement certificate being granted to the said layout/plot prior to the enforcement of the said regulation for inclusive Housing.

18. It is the case of the petitioners that when the representative of the petitioner no.2 went to enquire about the occupation certificate and the procedure to obtain the same in or about first week of October 2016, the petitioners were informed about the impugned notification dated 8th February, 2016. On 13th October, 2016, the petitioner no.2 made a representation to the respondent no.3. There was no response to the said representation dated 13th October, 2016. On 21st February, 2017, the petitioners filed this writ petition for various reliefs. The respondents filed their respective affidavits for consideration of this Court.

19. Mr.Godbole, learned counsel for the petitioners invited our attention to some of the documents annexed to the petition including notification issued by the State Government. Learned counsel placed reliance on sections 23 to 37 and 154 of the MRTP Act. It is submitted that the Municipal Corporation had already sanctioned the building construction plan for the entire layout in respect of the writ property on 5th June, 2012 for the purpose of residential development project. The petitioners had deposited the development charges for the entire land. The Municipal Corporation had issued the commencement certificate on 5th June, 2012 which was to remain valid for a period of one year initially. The said commencement certificate issued on 5th June, 2012 though referred to lesser area, the same was to be considered for the entire layout.

20. Learned counsel invited our attention to the order dated 17th July, 2008 passed by the State Government issued under section 37(1) of the MRTP Act thereby issuing directions to all the Municipal Corporations/Councils to initiate modification in their sanctioned

Development Control Regulations to include the Regulations mentioned therein for sub-division of the land for the layout of the land admeasuring 4000 sq.mtrs. and more. He submits that pursuant to the said order dated 17th July, 2008, the Municipal Corporation has not initiated any modification in the sanctioned development control regulations but directed that 10% tenaments shall be proposed for each EWS/LIG Group 30 to 40 sq.mtrs. and MIG Group 41 to 60 sq.mtrs., if the layout of the land was admeasuring 4000 sq.mtrs. or more. The said order was also a direction under section 37(1) of the MRTP Act and was not a notification under section 37(1AA) of the MRTP Act. He submits that the commencement certificate was already issued in favour on 5th June, 2012 i.e. much prior to the said order dated 17th July, 2008 for 19,820.78 sq.mtrs.

21. Learned counsel for the petitioners invited our attention to the notification dated 8th November, 2013 issued by the State Government under section 37(1AA) (c) of the MRTP Act sanctioning the proposed modification with some change so as to incorporate the Regulation of Inclusive Housing in the Development Control Regulation of the Municipal Corporations. He invited our attention to the Schedule 'A' appended to the said notification dated 8th November, 2013. He invited our attention to clause (2) of the said Schedule 'A' providing for EWS/LIG Housing subject to certain conditions mentioned therein.

22. Learned counsel invited our attention to the clause (4) of the said Schedule 'A' of the notification and submitted that it is made clear in the said clause that those provisions shall be applicable prospectively and shall not be applicable to any Housing Scheme or residential

development project wherein commencement certificate has been issued prior to the date of coming into force of those provisions and was valid on such date. He submits that the commencement certificate in this case having been issued prior to the date of the said notification dated 8th November, 2013, the provisions inserted by the said notification describing the conditions of EWS/LIG Housing for a plot of land admeasuring 4000 sq.mtrs. or more to be developed for housing scheme did not apply.

23. It is submitted by the learned counsel that on 13th May, 2013, the Municipal Corporation had certified that the construction of the building on plot nos. 1/1 + 1/2 + 1/3 + 1/4 and 1/5 at Pathardi Shivar is completed upto plinth level as per building plan approved by the Municipal Corporation. Learned counsel placed reliance on letter dated 11th July, 2014 of the Municipal Corporation to the petitioners granting NOC for environmental purpose for 1,05,200 sq.mtrs. out of which, the total FSI available for development as per prevailing DC Rules is 91,724.65 sq.mtrs. after conducting requisite open space. The petitioners were informed that the total maximum FSI plus non FSI that shall be permissible was 1,74,910 sq.mtrs.

24. Learned counsel for the petitioners invited our attention to the notification dated 3rd September, 2015 under section 37(1AA)(c) of the MRTP Act issued by the Government of Maharashtra thereby sanctioning the proposed modifications with some changes as prescribed in the Schedule appended to the said notification.

25. Learned counsel for the petitioners invited our attention to the

recommendation made by the Joint Director and also the Director accepting the impugned notification that it did not apply with the retrospective effect. He submits that though Nashik Municipal Corporation had applied for clarification from the State Government in this regard, the State Government did not issue any notification but directed the Corporation to decide the said issue.

26. Learned counsel placed reliance on the notice dated 8th February, 2016 under section 37(1AA) of the MRTP Act proposing to make modification as mentioned in Schedule 'A' appended to the said notice. By the said notification, the State Government proposed to add the proviso to clause 2(a). The new clause 2(f) got added, stating that 'affordable Housing tenaments to be constructed to the extent of 20% of basic zonal FSI only and shall not be required to be constructed on additional FSI/TDR wherever permissible as per DCR'. The said clause 2(e) is not applicable as the same is in respect of the staff quarters.

27. Learned counsel for the petitioners invited our attention to the affidavit in reply filed by the respondent nos. 1 and 2. He submitted that the contentions raised by the State Government are contrary to section 154 of the MRTP Act. It is submitted that the DC Regulations cannot be modified under section 154 of the MRTP Act. Clause (3) of the said impugned order be quashed and set aside on this ground itself. The commencement certificate was already issued in favour of the petitioners prior to the date of the said notification.

28. Learned counsel for the petitioners invited our attention to the stand taken by the respondent no.3 Corporation in the affidavit in reply

and submitted that respondent no.3 itself has relied upon the opinion given by the Joint Director, Town Planning as well as the Director of the Town Planning stating that the Regulation will not be applicable to the subject lands. He submits that the stand taken by the Corporation that the regulation 3.1 includes the approval granted earlier is contrary to section 37(1AA) (c) of the MRTP Act.

29. In support of this submission, learned counsel for the petitioners placed reliance on the (i) judgment of this Court delivered on 14th February, 2011 in case of ***D.B.Realty Ltd. & Anr. vs. State of Maharashtra & Ors.***¹ in ***Writ Petition No. 2287 of 2010*** and (ii) judgment of this Court in ***Writ Petition No. 1276 of 2013*** dated 8th October, 2013 in case of ***Sarang Avinash Kamtekar vs. The State of Maharashtra & Ors.***², (iii) judgment of this Court in ***Writ Petition No. 7006 of 2006*** dated 15th September, 2009 in case of ***Kausarbag Co-operative Housing Society Ltd. vs. The State of Maharashtra & Ors.***³, (iv) judgment of Supreme Court in ***Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr.***⁴ (v) Judgment of this Court in ***Seema Savale Vs. State of Maharashtra***⁵ and (vi) judgment of Supreme Court in ***Civil Appeal No.3008-3009 of 2010***⁶ dated 9th October, 2014 in case of ***Pune Municipal Corporation & Anr. vs. Kausarbag Co.op. Housing Society Ltd. & Anr.*** upholding the judgment of this Court. He tendered a copy of the judgment of Supreme Court in case of ***Director General (Road Development) National Highways Authority of India vs. Aam***

1 (2015) 3 Bom CR 640

2 2016 SCC OnLine Bom 4638

3 (2010) 1 Bom C.R. 409

4 (2003) 5 SCC 413

5 (2013) 2 Bom CR 267

6 (2014) 15 SCC 753

Aadmi Lokmanch and others⁷ and in particular paragraphs 81 to 88 and submits that the Supreme Court in the said judgment has also considered the amended section 154 (1) of the MRTP Act.

30. Mr.Patil, learned counsel for the respondent no.3 Corporation on the other hand submits that the petitioners had taken development rights in respect of the lands bearing survey no. 1/1 to 5 admeasuring 1,05,200 sq.mtrs. and had submitted plans for group housing scheme, building permission on 3rd October, 2011. The Corporation had granted building permission and commencement certificate in respect of the proposed construction of 19820.78 sq.mtrs. On 13th May, 2013, the plinth completion certificate was issued in respect of buildings A, E, S, T. He submitted that the Government of Maharashtra had issued a notification on 8th November, 2013 and made provisions regarding inclusive housing in the Development Control Regulations in furtherance of the housing policy of the State which provides for inclusive housing for the low income group in layouts. The said regulation provides for 20% of the net plot area either in the form of developed plots or constructed tenaments.

31. It is submitted that on 28th August, 2014, the petitioners had applied for revised building permission. On 7th August, 2015, the Corporation granted building permission and commencement certificate in respect of 75470.73 sq.mtrs. inclusive of the earlier sanctioned permission. The petitioners had already given undertaking to provide LIG and EWS construction in case if it is required in future or earmark for the plan. The petitioners now cannot be allowed to urge that the said condition for providing LIG/EWS as per Government Circular dated 8th

⁷ (2021) 11 SCC 566

November, 2013 would not apply with retrospective effect.

32. Learned counsel for the respondent no.3 distinguished the judgment of this Court in case of ***D.B.Realty Ltd. & Anr.***(supra) on the ground that in that matter, the directions were issued by the State Government under section 154 of the MRTTP Act and immediately thereafter the amendment was brought in the said provision. It was submitted that when the layout was sanctioned by the Corporation on 3rd October, 2011, 1,05,200 sq.mtrs., the said layout could not be considered as a commencement certificate for the entire area. On 5th June, 2012, the building permission and commencement certificate was granted only in respect of the area admeasuring 19,820.78 sq.mtrs. in respect of portion marked as A, E, S and T and not for the entire layout. On the other hand the Regulation for Inclusive Housing came into effect on 8th November, 2013.

33. It is submitted that on 28th August, 2014, the petitioners had applied for revised building permission for further development. He relied upon clause (4) of the Schedule 'A' to the said notification dated 8th November, 2013. He submits that the petitioners had applied and were granted commencement certificate in respect of 19,820.78 sq.mtrs. which was in force on the date of the impugned notification dated 8th November, 2013. The proposal subsequently submitted by the petitioners for seeking permission for further development after 8th November, 2013, were governed by the provisions as on the date of making an application for further development i.e. the amendment carried out by the State Government.

34. It is submitted that the Government need not issue any clarification as sought for by the respondent no.3 but directed the respondent no.3 to take their own decision. The commencement certificate already granted prior to 8th November, 2013 by way of commencement certificate in respect of 19,820.78 sq.mtrs. only was thus saved and not the permission for further development sought subsequent to the date of notification dated 8th November, 2013. No right is vested in the petitioners merely on the basis of the sanctioned layout.

35. In support of this submission, learned counsel placed reliance on the judgment of the Supreme Court in case of **Howrah Municipal Corporation and Others vs. Ganges Rope Co. Ltd. and Others**⁸ He submits that the Calcutta High Court in that matter had directed the Corporation to sanction the plan ignoring the amendment to the provisions of law. Supreme Court was pleased to set aside the order passed by the High Court. He relied upon paragraphs 34 to 38 of the said judgment. Learned counsel for the Corporation relied upon Rule (6) of the Maharashtra Development Plan Rules, 1972 and submitted that the commencement certificate was issued for actual building constructing of the land admeasuring 19,820.78 sq.mtrs.

36. Mr.Patel, learned Additional Government Pleader submitted that the stage of the sanctioning layout comes earlier for the entire portion of the land whereas the commencement certificate can be applied stage-wise. He invited our attention to the part plinth completion certificate dated 13th May, 2013 and submitted that the said certificate clearly indicated that the said certificate was for building nos. A, E, S and T for

8 (2004) 1 SCC 663

the work completed upto plinth level as per building plan vide commencement certificate dated 5th June, 2012.

37. The petitioners had already reserved 20% of the EWS, LIG out of the said 19,820.78 sq.mtrs. Since the petitioners had constructed about 4000 sq.mtrs. the petitioners are required to earmark 20% for EWS/LIG. He submits that the opinion of the Joint Director, Town Planning and Director of the Town Planning on the question of law contrary to the provisions of the MRTP Act are not binding on the Corporation. The Nashik Municipal Corporation had only requested the State Government to clarify on certain aspects. Both these letters of Joint Director as well as Director of Town Planning nowhere states that if the layout is sanctioned, the impugned notification will not apply providing for tenements for EWS/LIG.

38. Mr.Godbole, learned counsel for the petitioners in his rejoinder arguments relied upon section 2(7) of the MRTP Act i.e. definition of 'development' and submitted that the layout is included in the definition of the development. The application for permission for development has to be made under section 44 of the MRTP Act. The Planning Authority can grant permission or refuse under section 45(2) of the MRTP Act. He submitted that any permission granted under section 45(1) shall be contained only in the commencement certificate in the prescribed form.

39. It is submitted that merely because in the year 2012, the commencement certificate was granted only to the extent of 19,820.78 sq.mtrs., the respondents cannot be allowed to canvass that any application made by the petitioners for further development after the date

of the impugned notification would be governed by the amended clause in the notification issued under section 37(1AA) of the MRTP Act. He relied upon Rules 6 and 7 of the Maharashtra Development Planning Rules and submitted that the application for seeking permission for development has to be made under rule (6) read with section 44 of the MRTP Act in the prescribed form.

40. Learned counsel submitted that rule 7 also referred to the layout which was issued in respect of the entire land and not only in respect of 19,820.78 sq.mtrs. The layout permission has to be read in the commencement certificate. He distinguished the judgment relied upon by Mr.Patil and submitted that the layout in this case was already sanctioned prior to the date of the impugned notification. Under the guise of clarification to the notification under section 37(1AA) of the MRTP Act, the State Government under section 154 of the MRTP Act cannot amend the substantive provisions. The State Government has acted beyond their power by invoking under section 154 of the MRTP Act in this case.

REASONS AND CONCLUSIONS :

41. The questions that fall for consideration of this Court are (1) whether the impugned notification dated 8th November,2013 providing that, in the sub-division of the land admeasuring 4000 sq.ft. or more for residential purpose, a minimum 20% of the net plot has to be provided either in the form of 30-50 for Economically Weaker Section(EWS) / Lower Income Group (LIG), is applicable to the entire layout sanctioned by the Municipal Corporation prior to 8th November, 2013, irrespective of the fact that, the commencement certificate issued by the Municipal

Corporation prior to 8th November, 2013 was not for the entire sanctioned layout or (ii) whether the impugned notification dated 8th November, 2013 issued by the State Government would apply to the application made for revised commencement certificate or for further development (in addition to the area covered by the first commencement certificate) or not ?

42. The admitted position in this matter is that the respondent no.3 Corporation had granted sanction to the building construction plans on 5th June, 2012. The commencement certificate provided for four buildings for Stilt + 4 floors and 16 buildings. It is not in dispute that the said commencement certificate was only in respect of area admeasuring 19,820.78 sq.mtrs., whereas the sanctioned layout with basic F.S.I. area was 91,724 sq.mtrs. and non F.S.I. area of 43,924 sq.mtrs. It is not the case of the petitioners that the petitioners had applied for commencement certificate for the entire area of layout.

43. Under section 45 of the MRTP Act, the Planning Authority is empowered either to grant the permission unconditionally or to refuse the permission subject to certain conditions or to refuse the permission. Under section 45(2), any permission granted under section 45(1) with or without condition shall contain in the commencement certificate in the prescribed form. The validity period of the prescribed commencement certificate is prescribed in the commencement certificate itself. The Municipal Corporation had issued a part plinth completion certificate on 13th May, 2013 pursuant to the application dated 31st January, 2013 for building nos. A, E, S and T. The petitioners were directed to proceed for further work as per the approved building plan and conditions mentioned

in the commencement certificate.

44. If according to the petitioners, the sanctioned layout for the entire land was sufficient then, the application for commencement certificate for part of the area would not have been applied for by the petitioners, followed by application for issuance of commencement certificate for the balance area.

45. The petitioners could not dispute that the commencement certificate can be applied at various stages for commencing construction carried out of the sanctioned layout. Sanction of layout of the entire land cannot be mixed up with the issuance of commencement certificate. Sanction of layout may be for the entire plot whereas the commencement certificate may be for a part of the entire plot. Admittedly in this case, the petitioners have applied for sanction for the further development which was much after the date of the issuance of the impugned notification. This fact is clear from the NOC dated 11th July, 2014 for environmental purpose and also the sanction of building permit and commencement certificate dated 7th August, 2015 pursuant to the application made on 28th August, 2014. The Municipal Corporation had granted building permission and commencement certificate in respect of 75470.73 sq.mtrs. on 7th August, 2015 pursuant to the application dated 28th August, 2014 which area is inclusive of the earlier sanction building permission.

46. Mr.Godbole, learned counsel for the petitioners could not explain as to why the petitioners were required to apply for the revised building permission and for commencement certificate in respect of the balance area not covered by the first commencement certificate dated 5th June, 2012. Clause (4) of the Schedule 'A' appended to the notification dated

8th November, 2013 clearly provides that the provisions of the said notification shall be applicable prospectively and shall not be applicable to any housing scheme or residential development project wherein the commencement certificate has been issued prior to the date of coming into force of those provisions and valid as of such date.

47. It is not the case of the respondents that the notification dated 8th November, 2013 has to be applied also in respect of the area of 19,820.78 sq.mtrs. which was in respect of the commencement certificate issued prior to 8th November, 2013. The petitioners had been granted benefit of the subsequent notification regarding TDR and other benefits issued subsequent to the date of sanction of the layout and to the date of issuance of the first commencement certificate. The layout submitted by the petitioners was in respect of the building nos. A to S and one bungalow insofar as construction of residential tenaments is concerned. The petitioners had also applied for permission of the construction of schools, shops and offices. The construction was to be carried out phase-wise.

48. Supreme Court in case of ***Howrah Municipal Corporation and Others*** (supra) has held that the building or Regulation prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction. It is held that neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. It is held that 'settled expectation' or so-called 'vested right' cannot be

countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon. In the matter of sanction of buildings for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person or a party.

49. Insofar as the judgment of Supreme Court in case of ***Director General (Road Development) National Highways Authority of India*** (supra) is concerned, Supreme Court in the said judgment had held that the Court can set aside regulations and arbitrary regulations. In the facts of that case, the Supreme Court had held that the impugned notification under section 154 of the MRTP Act was vague and arbitrary and not based on any reason but was based on the directions of the National Green Tribunal without any application of mind on the part of the State. In this case, the petitioners could not demonstrate as to how the notification issued by the State of Maharashtra is issued without any application of mind or is vague or arbitrary.

50. In the said judgment, it is held that the plans for developments that were approved before the impugned notification could not be disturbed and the right of the applicants, be the developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. The Supreme Court also dealt with the powers of the Planning Authority under section 37 of the MRTP Act to carry out the modification in a final development plan as it will not change its character. We do not find any breach on the part of the State Government in issuing the impugned notification in violation of section 37 of the MRTP Act. The judgment of Supreme

Court in case of ***Director General (Road Development) National Highways Authority of India*** (supra) thus would not assist the case of the petitioners.

51. Insofar as judgment of Supreme Court in case of ***Laxminarayan R.Bhattad & Others vs. State of Maharashtra & Another (supra)*** and in judgment of Supreme Court in case of ***Pune Municipal Corporation and another vs. Promoters and Builders Association and another***⁹ are concerned, learned counsel for the petitioners could not point out as to how the said judgment would apply to the facts of this case.

52. Insofar as the correspondence exchanged between the Joint Director, Town Planning Department and the Director, Town Planning Department opining that the impugned Regulations were applicable prospectively is concerned, even if there is any concession of law made by the officers of the Municipal Corporation, under a misconception question of law, such concession being contrary to the provisions of MRTP Act is not binding upon the authority. The reference made by the respondent no.3 on the opinion given by the Joint Director, Town Planning Authority as well as Director, Town Planning Authority in the affidavit in reply filed by the respondent no.3 is of no significance.

53. Insofar as letter dated 30th September, 2016 addressed by the State of Maharashtra to the responded no.3 to take appropriate decision at its level by taking into consideration the Government directives relied upon by the learned counsel for the petitioners is concerned, the respondent no.3 has already opposed this petition raising various issues on the

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validity of the impugned resolution. The said communication from the State of Maharashtra to the respondent no.3 thus would not assist the case of the petitioners.

54. In our view learned counsel for the respondents are right in their submission that merely because the layout is sanctioned by the Municipal Corporation for the larger area, that would not amount to granting commencement certificate in respect of the entire area which was subject matter of the sanction layout. The applicant whose layout was sanctioned by the Municipal Corporation is entitled to apply for commencement certificate for part of the larger area from time to time in accordance with the provisions of the Municipal Act.

55. Mr. Godbole, learned counsel for the petitioners could not dispute that his clients had applied for revised commencement certificate for part of the area and for substantial revised commencement certificate for the larger area. When the application for revised commencement certificate was considered, the applicable Regulations for sanctioning such commencement certificate prevailing on the said date of considering such application for commencement certificate will apply and not when initial sanction of layout was granted.

56. In our view there is no merit in the submission made by the learned counsel for the petitioners that in this case, the State Government has modified Development Control Regulations under section 154 of the MRTP Act. In our view, Mr. Patil, learned counsel for the respondent no.3 rightly distinguished the judgment of this Court in case of ***D.B.Realty Ltd. & Anr.***(supra) on the ground that immediately after directions were

given under 154 of the MRTP Act, the amendments were brought in the said provision.

57. In our view, the commencement certificate already granted prior to 8th November, 2013 in respect of the 19820.78 sq.mtrs. only was saved and not the permission sought for further development subsequent to the notification dated 8th November, 2013. No rights are vested in the petitioners for the entire area mentioned in the sanctioned layout under the said impugned notification dated 8th November, 2013. Mr. Patil, learned counsel for the respondent no.3 has rightly placed reliance on Rule 6 of the Maharashtra Development Planning Rules, 1972 in support of his submission that the commencement certificate can be applied at various stages.

58. A perusal of the plinth completion certificate dated 13th May, 2013 clearly indicates that the said certificate was issued for building nos. A, E, S and T for the work completed upto plinth level as per building plan vide commencement certificate dated 5th June, 2012. The petitioners did not dispute that they have already reserved 20% of the tenements for EWS, LIG out of the said 19,820.78 sq.mtrs. Mr. Godbole, learned counsel for the petitioners did not dispute that his clients had already given an undertaking by filing an affidavit to reserve 20% of the tenements for EWS, LIG out of the said 19,820.78 sq.mtrs.

59. Insofar as the reliance placed on section 45(2) of the MRTP Act by the learned counsel for the petitioners in support of his submission that in support of the entire area mentioned in the layout sanctioned by the Planning Authority stands incorporated in the commencement certificate

as if the first commencement certificate was granted for the entire sanctioned area mentioned in the layout is totally untenable and is misplaced. Similarly reliance placed on Rule (7) of the Development Planning Rules in support of the same submission is also misplaced.

60. In our view, the State Government has not issued the impugned notification under section 37(1AA) of the MRTP Act, 1996 under the guise of clarification to the notification or has acted beyond their powers by invoking the provisions of section 154 of the MRTP Act. In our view, writ petition is totally devoid of merits.

61. We accordingly pass the following order :-

- (a) Writ Petition No. 6507 of 2017 is dismissed. Rule is discharged.
- (b) There shall be no order as to costs.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]