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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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VASANT
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Date: 2022.10.11
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WRIT PETITION NO.11776 OF 2022

	Galore Developers Private Limited, A Company incorporated under the Companies Act, 1956 having address at 4 – Vishnuprasad, 783/B, Erandawane, Pune – 411 004. And also at 126/A/1, Bijapur Road, Solapur 413 008.	...Petitioner
	Versus....	
1.	Solapur Municipal Corporation, Indra Bhavan, Railway Lane, Solapur 413 001.	
2.	The Municipal Commissioner, Solapur Municipal Corporation, Indra Bhavan, Railway Lane, Solapur 413 001.	
3.	District Collector, Solapur, Solapur Collector Office Compound, Behind Dakshin Tehsil Office, Solapur – 413 001 through Government Pleader, Appellate Side, High Court, Bombay.	
4.	Inspector General of Registration Office of the Inspector General of Registration and Controller of Stamps, through Government Pleader, Appellate Side, High Court, Bombay.	
5.	Joint Sub-Registrar of Assurances, Solapur Collector Office Compound, Behind Dakshin Tehsil Office, Solapur – 413 001 through Government Pleader, Appellate Side, High Court, Bombay.	

6.	State of Maharashtra through Additional Chief Secretary. Urban Development Department, Mantralaya, Mumbai - 400 032.	...Respondents
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Dr.Milind R. Sathe, Senior Counsel with Mr.Amogh Singh and Mr.Kaustubh Patil i/b Mr.Pradeep L. Dubey for the Petitioner.

Mr.Vishwanath Patil for SMC - Respondent Nos.1 and 2.

Mr.A.I. Patel, Addl. G.P. with Mr.R.P. Kadam, AGP for the State – Respondent Nos.3, 4, 5 and 6.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**
DATE : 6TH OCTOBER, 2022.

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

1. Rule. Mr.Patil, learned counsel for the respondent nos.1 and 2 waives service. Mr.Patel, learned Additional Government Pleader waives service for the respondent nos.3 to 6. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the notice dated 2nd September, 2022 issued under section 51 of the Maharashtra Regional Town Planning Act, 1966 (for short “MRTP Act”) and also for quashing and setting aside the letter dated 19th September, 2022 annexed at Exhibit “L” and Exhibit “N” to the petition respectively.

3. The petitioner also prays for a writ of certiorari for quashing

and setting aside the letter dated 19th September, 2022 addressed to respondent nos.3 and 5, annexed at Exhibit "O" to the petition.

4. On 23rd March, 2010, the petitioner entered into an agreement with the respondent nos.1 and 2 to hand over their plot subject to the development rights being given to them. On 24th December, 2018, the respondent nos.1 and 2 granted permission to the petitioner to develop the said property however on the condition that 496.47 sq. mtrs. of built up commercial area to be given to the respondent nos.1 and 2 as per the Solapur Development Control Regulations (for short "Solapur DCR").

5. During the period 27th March, 2019 and 1st July, 2022, the respondent nos.1 and 2 sanctioned the plans for plots from time to time. It is the case of the petitioner that out of the four wings, three wings are almost completed and the construction of the fourth wing is at the advance stage.

6. On 8th December, 2020, the petitioner and the respondent nos.1 and 2 executed a registered sale deed whereby 496.47 sq. mtrs. had been handed over by the petitioner to the respondent nos.1 and 2 and the same has been accepted by them.

7. On 2nd September, 2022, the respondent nos.1 and 2 issued a notice under section 51 of the MRTP Act to the petitioner informing that the plans would be revoked, as the area to be handed

over to the respondent nos.1 and 2 as per Solapur DCR was 1635.45 sq. mtrs and not 496.47 sq. mtrs. The petitioner responded to the said notice dated 2nd September, 2022 by a reply dated 9th September, 2022 and called upon the respondent nos.1 and 2 to withdraw the said notice.

8. On 19th September, 2022, the respondent nos.1 and 2 addressed a letter to the respondents no.3 and 5 directing them not to register any agreements for sale in respect of the subject property. The petitioner thus filed this petition for seeking various reliefs.

9. This matter was argued by the learned counsel for the parties on 4th October, 2022 when the learned counsel for the Municipal Corporation sought time to take instructions from the Commissioner of Municipal Corporation, Solapur to make an appropriate statement before this Court. This Court granted *ad-interim* reliefs in terms of prayer clause (g) of the petition.

10. Mr.Patil, learned counsel for the respondent nos.1 and 2 , on instructions, states that an appropriate order may be passed by this Court. The Municipal Corporation is not agreeable to withdraw the impugned notice. Statement is accepted.

11. Dr.Sathe, learned senior counsel for the petitioner invited our attention to the various annexures of the petition, including the agreement annexed at Exhibit "A" to the petition and also Regulation

9 of Solapur DCR, Table 3, II Commercial (C) (b), District Centre (C2) and clause (c) (for short “the said clause (c) of Solapur DCR”) thereof annexed at Exhibit “B” to the petition.

12. It is submitted by the learned senior counsel that the notice under section 51 of the MRTP Act itself is totally without jurisdiction. It is submitted that the petitioner has already completed the work substantially. He invited our attention to the said notice issued under section 51 of the MRTP Act and submitted that none of the conditions for attracting section 51 of the MRTP Act are applicable to the facts of this case. Notice under section 51 of the MRTP Act has been issued on the ground that there was a mistake on the part of the respondent nos.1 and 2 in calculating the 15% of the built up commercial area provisions prescribed under II (b) of the said clause (c) of the Regulation 9 of Solapur DCR. He submitted that any alleged mistake of such calculation of the area required to be handed over by the petitioner to the respondent nos.1 and 2 cannot be the basis for issuance of a notice under section 51 of the MRTP Act.

13. In support of this submission, the learned senior counsel placed reliance on the judgment of this Court in case of **Kohinoor CTNL Infrastructure Company Pvt Ltd. & Anr. vs. Municipal Corporation of Greater Mumbai & Ors., 2013 (1) Mh.L.J. 88** and in particular paragraphs 9 to 12. Learned senior counsel also placed

reliance on the judgment delivered by the learned Single Judge of this Court in Writ Petition (Lodging) No.25336 of 2021 in case of **Macrotech Developers Limited vs. State of Maharashtra & Ors.**, and in particular paragraphs 20 and 21. Learned senior counsel placed reliance on the judgment delivered by the Aurangabad Bench of this Court in Writ Petition No.2111 of 2022 in case of **Govind Ramling Solapure & Ors. vs. The State of Maharashtra & Ors.**, in support of his submission that the Registering Authority cannot refuse to register on the ground that the title of the applicant applying for registration is defective. He submitted that in furtherance of the notice under section 51 of the MRTTP Act issued by the respondent nos.1 and 2, the respondent nos.1 and 2 could not have issued any instructions to the respondent nos.3 and 5 to not register any documents, if applied by any of the flat purchasers, to whom the petitioner had sold various units in the building under reference.

14. Learned senior counsel invited our attention to various documents annexed to the petition including the agreement dated 8th December, 2020, annexed at page 78 entered into between the petitioner and the respondent nos.1 and 2 and submitted that even under the said agreement, the parties were clear that the petitioner was required to hand over 15% of the built up commercial area of balance 30% FSI developed for commercial purpose under the said

clause (c) of Regular 9 of Solapur DCR.

15. The petitioner has already handed over the required 496.47 sq. mtrs. area. Learned senior counsel tendered the original documents for consideration of this Court in support of his submission that even according to the Area Statement issued by the respondent nos.1 and 2 while sanctioning the plan submitted by the petitioner, the respondent nos.1 and 2 has rightly considered 15% of the 30% under the said clause (c) as 381 sq. mtrs. which came to be revised as 496 sq. mtrs. The respondent nos.1 and 2 thus cannot be allowed to issue a notice under section 51 of the MRTP Act on the ground that there was a mistake on the part of the respondent nos.1 and 2 all throughout.

16. Mr.Patil, learned counsel for the respondent nos.1 and 2 on the other hand invited our attention to the said clause (c) of 9 of the Solapur DCR and submitted that clauses (a) to (c) have to be read together and clause (c) cannot be read in isolation. He submitted that if the arguments of the petitioner that the entitlement of the respondent nos.1 and 2 would only be 15% of the 30% that is accepted, the Municipal Corporation would not get more than 4.5% of the total commercial area allowed to be exploited by the Municipal Corporation. In support of this argument, the learned counsel, he invited our attention to the provisions of Unified Development Control

& Promotion Regulations for Maharashtra State, 2020 (for short “UDCPR”) and more particularly clause 11.1 (3) under Commercial Area along with General Planning Requirements and submitted that the respondent no.1 Corporation falls under Class “D” and thus according to the DCPR, entitlement of the respondent no.1 would be 40% of the total land to be surrendered free of costs and free from encumbrances or at least 25% of percentage of constructed amenities of total land free from encumbrances.

17. It is submitted by the learned counsel that in view of there being a mistake on the part of the respondent nos.1 and 2, the Corporation has rightly demanded 15% of the total FSI.

18. Dr.Sathe,learned senior counsel for the petitioner in his rejoinder argument invited our attention to Note (ix) of Table 11 of UDCPR and vehemently urged that since the plan for development had already been sanctioned by the respondent nos.1 and 2, much prior to the existence of UDCPR, the sanction of the said plan is governed by the older Solapur DCR and the same shall be continued till the completion of the construction. He submitted that the provisions of UDCPR thus pressed in service by the respondent nos.1 and 2 would not apply to affect the facts of this case.

19. With the assistance of the learned counsel for the parties, we have perused the agreement entered into between the parties

annexed at Exhibit “A” to the petition. The said agreement is followed by another document annexed at page 32 of the petition. Clause 5(e) of the said agreement provided that the Corporation has right to withhold the building permission granted to the party of the first part i.e. the petitioner herein in case of failure to hand over the possession to the Corporation as per the agreement and as per the Government Resolution issued by the Government of Maharashtra. The fact remains that for the purpose of invoking powers under 9(c), if any, by the Corporation which in this case has not been invoked, the Corporation has to satisfy that the petitioner, who had agreed to hand over possession to the Corporation of the area as per the agreement has in fact not handed over the possession of such agreed tenaments.

20. Under the said clause (c) of Regulation 9 of the Solapur DCR, the relevant provision of DCR relied upon by both the parties read thus :

“PART II

GENERAL PLANNING REQUIREMENTS

Regulation 9. Land uses and manner of development – The user of all lands within the Municipal limits of Solapur Municipal Corporation, which have been allocated designated or reserved for certain purposes in the development plan shall be regulated in regard to type & manner of development / redevelopment according to the table no.3 hereunder.

TABLE : 3

Land Uses and Manner or Development

II **COMMERCIAL (C)**

(a) Local Commercial C1) (b) Dist. Centre (C2)	Corporation or Owner	Reservation of site to be converted in to zoning for same purpose and allowed to be developed on following conditions by owner / owners private entrepreneurs for the users permissible in R1, R2, C1 and C2 zones.
		a). The owners shall develop 40% of the total permissible FSI exclusively for residential purpose.
		b). The owner shall develop further 30% of FSI for residential cum commercial purpose of which 10% of development shall be allowed for commercials purpose on the ground floor in the form of shopping line or in the form of shopping centre in the residential complex.
		c). The owner shall develop the balance 30% FSI exclusively for commercial purpose out of which 15% of the built up commercial area at one end or side of the site shall be given to the Solapur Municipal Corporation free of cost and this commercial area shall be used by the Solapur Municipal Corporation only for the purpose related to rehabilitation of those affected by implementation of DP and or office users of other public bodies but restricted to Municipal Corporation, MSEB Water Supply and sanitation Board and MTNL.

(d). The owner shall be entitled for 50% FSI of the built up commercial area handed over to Solapur Municipal Corporation.”

21. A perusal of the clauses (a) and (b) of Regulation 9, Table 3 of part II indicate that the owner is under an obligation to develop 40% of the total permissible FSI exclusively for residential purpose. Clause (b) casts an obligation upon the developer to develop further 30% FSI for commercial cum residential purpose of which 10% of development shall be allowed for commercial purpose on the ground floor in the form of shopping line or in the form of shopping centre in the residential complex.

22. A perusal of clause (c) clearly indicates that the said clause provides for not only the obligation on the owner to develop the balance 30% FSI exclusively for commercial purpose but also provides for further obligation to give to the respondent no.1, 15% of the 30% built up commercial area on one end or on a side of the site, which area can be used by the Solapur Municipal Corporation only for the purpose related to rehabilitation of those affected by the implementation of DP and / or the office users of other public bodies but restricted to Municipal Corporation, MSEB Water Supply and sanitation Board and MTNL. Clauses (a), (b) and (c) do not cast any obligation on the owner to give any portion of the area allowed to be

developed under clauses (a) and (b) i.e. 40% and 30% respectively.

23. The petitioner had applied for a sanction of the plan based on the agreement and also on the basis of the relevant provisions of Solapur DCR including Table 3 – Land Uses and Manner of Development. The Municipal Corporation had entered into an agreement with the petitioner providing a specific area to be handed over by the petitioner i.e. 496.47 sq. mtrs. It is a common ground that the petitioner has already handed over the possession of the said 496.47 sq. mtrs. area out of the commercial component constructed by the petitioner under the said clause (c) to the respondent nos.1 and 2. The respondent nos.1 and 2 has accepted the said area without any objection. The area statement prepared by the Municipal Corporation also clearly indicates that even according to the respondent no.1, the obligation on the part of the petitioner was to hand over 15% of the 30% area of the commercial tenaments constructed by the petitioner under the said clause (c) of the Regulation 9 of Solapur DCR.

24. We shall now examine the issue where section 51 of the MRTP Act pressed in service by the Municipal Corporation in this case is without jurisdiction or not. A perusal of section 51 of the MRTP Act clearly indicates that the said provision can be invoked only in a case when the planning authority is of the view that in

regards to the development plan prepared or under preparation that any permission to develop the land granted or deemed to be granted under the provisions of MRTP Act should be revoked or modified, the planning authority may, after giving an opportunity of being heard to the person concerned, against such revocation or modification, by order, revoke or modify the permissions to such extent as appears to it to be necessary. Proviso (a) of section 51 makes it clear that such an action cannot be initiated after these operations have substantially progressed or have been completed.

25. A perusal of section 51 of the MRTP Act indicates that none of the ingredients required to be satisfied under section 51 (1) read with proviso (a) are satisfied. The respondent nos.1 and 2 have invoked section 51 on the ground that there was mistake on the part of the respondent nos.1 and 2 in calculating the area of the commercial tenements required to be handed over by the petitioner to the respondent nos.1 and 2 under the said clause (c) of Regulation 9 of the Solapur DCR. Such an alleged mistake on the part of the respondent nos.1 and 2 cannot be the basis for invocation of powers under section 51 of the MRTP Act. In our view the notice issued under section 51 of the MRTP Act thus is *ex-facie* without jurisdiction and contrary to the provisions of the said Act. Be that as it may, the work of the petitioner has been substantially progressed and thus the

notice under section 51 could not have been issued on this ground also.

26. A perusal of the record further indicates that both the parties after interpreting the said clause (c) of Regulation 9 of Solapur DCR has accordingly calculated 15% of the 30% FSI used by the petitioner for carrying out the construction of the commercial purposes, i.e. 4.5%. Based on the said clause, the parties entered into a further agreement and quantified an actual area of 15% of the 30% required to be surrendered by the petitioner to the respondent nos.1 and 2 out of the tenaments constructed for commercial purpose. Based on such an agreement read with the said clause (c) of Regulation 9 of Solapur DCR, the petitioner has proceeded with the construction of large number of tenaments. The construction has progressed substantially.

27. At this stage, this Court cannot allow the Municipal Corporation to take a contrary stand and to issue a notice under section 51 of the MRTP Act under the guise of the alleged mistake on the part of the respondent nos.1 and 2. The said clause is clear and does not warrant any other interpretation as sought to be canvassed by the Corporation.

28. A Division Bench of this Court in case of **Kohinoor CTNL Infrastructure Company Pvt Ltd. & Anr.** (supra) has construed

section 51 of the MRTTP Act and has held that the intent of section 51 of the MRTTP Act is to ensure that a development which would impede or be detrimental to the realisation of the purposes of a development plan that is already prepared, or even one that is under preparation, should be regulated and accordingly the powers are conferred upon the planning authority to modify or revoke the planning permissions that are already granted to develop a land. This Court has also construed provision (a) of section 51 of the MRTTP Act and has held that if the work has substantial progress, no such powers under section 51 of the MRTTP Act can be invoked. The principles laid down by this Court in case of **Kohinoor CTNL Infrastructure Company Pvt Ltd. & Anr.** (supra) apply to the facts of this case.

29. Insofar as the provisions of UDCPR pressed in service by Mr. Patil, the learned counsel for the Municipal Corporation for demanding a larger area to be surrendered by the petitioner applying for the sanction of the plan is concerned, in our view, Dr. Sathe, learned senior counsel for the petitioner has rightly invited our attention to Note IX to Chapter II of UDCPR. A perusal of the said note clearly indicates that where the permissions for development under reserved accommodations are already granted as per the earlier Regulations, the same should be continued to be available till

the completion of the construction. It is a common ground that in this case, the permission was already granted for carrying out the construction in favour of the petitioner by the respondent nos.1 and 2 under the provisions of Solapur DCR prior to the date of UDCPR coming into force. Reliance placed by Mr.Patil, learned counsel for the respondent nos.1 and 2 on the provisions of UDCPR is thus misplaced.

30. In our view, since the notice under section 51 of the MRTP Act issued by the respondent nos.1 and 2 is thus without jurisdiction, the respondent nos.1 and 2 could not have issued any directives to the Registering Authority not to register any document that would be applied for by the buyers of the various units from the petitioner. The Aurangabad Bench of this Court has construed the provisions of the Registration Act and more particularly sections 34 and 35 of the Registration Act, 1908 and Rule 44(1)(v) and has held that the Registering Authority has no power to refuse to register any document on the ground that the party applying for registration has no title. The Registering Authority is not the adjudicating authority and has no power of adjudication as to whether the transaction which is the subject matter of the document lodged for registration is validly executed or not or is prohibited by any law or not. The principles laid down by this Court in case of **Govind Ramling Solapure & Ors.**

(supra) apply to the facts of this case. In our view, the respondent nos.1 and 2 thus could not have issued any such directives to the Registering Authority not to register any such document. This action on the part of the respondent nos.1 and 2 also is totally without jurisdiction and without authority of law.

31. We accordingly pass the following order :-

i). The writ petition is allowed in terms of prayer clauses (b), (c) and (d), which are as under :-

“b).That this Hon’ble Court be pleased to issue Writ of Certiorari or any other appropriate writ, order and/or direction, in the the nature of Certiorari at it deems fit, thereby quashing and setting aside the notice u/s. 51 of MRTP Act dated 2nd September, 2022, Exhibit “L” to the Petition;

(c). That this Hon’ble Court be pleased to issue Writ of Certiorari or any other appropriate writ, order and/or direction, in the nature of Certiorari at it deems fit, thereby quashing and setting aside the letter dated 19th September, 2022, Exhibit “N” to the Petition.

(d). That this Hon’ble Court be pleased to issue Writ of Certiorari or any other appropriate writ, order and/or direction, in the nature of

Certiorari at it deems fit thereby quashing and
setting aside the letter dated 19th September,
2022, Exhibit “O” to the Petition.”

ii). Rule is made absolute accordingly. No order as to costs.

Parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)