

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1042 OF 2021

M/s. Vijay Co-op. Hsg.Soc. Ltd. & Anr. .Petitioners
Vs.
The Thane Municipal Corporation & Ors. .Respondents

Mr. Sandesh Patil i/b. Ms. Anusha Amin for Petitioners.
Mr. Mandar Limaye for Respondent No.1.
Mr. Kailas Dewal with Mr. Yash Dewal for Respondent Nos.2 to 4.
Mr. A.A. Alaspurkar, AGP for State/Respondent No.5.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.
DATE : MAY 03, 2023

P.C.:

1. We had heard learned counsel for the parties on this petition on the earlier occasion i.e. on 08 March, 2023, when we passed the following order:-

“ After hearing the learned Counsel for the parties for some time, we are of the opinion that the Municipal Corporation shall place the clear position on record as to whether any FSI, as entitled and/or utilised on the plot belonging to the petitioner bearing survey no. 247/3, is being utilised by Respondents No.2 to 4 by undertaking construction on plot no.247/2.

2. Affidavit to be served on all the parties well in advance.
3. Stand over to 21st March 2023.”

2. In pursuance of the above order, an affidavit of Mr. Devendra Ner, Executive Engineer dated 17 March, 2023 is placed on record, whereby in

paragraph 5, the following statement has been made:-

“5. I say that the Corporation has issued the Commencement Certificate to Respondent No.4 for developing Final Plot No.247/2 on the basis of the documents provided by them and also on the basis of order passed by the City Survey Officer dated 27.10.2013. I say that no area from Final Plot No.247/3 has been utilized to develop Final Plot No. 247/2 and the letter dated 06.11.2020 makes the position clear.”

(emphasis supplied)

Thus, the municipal corporation has clearly stated that no area from Final Plot No.247/3, with which the petitioner is concerned, has been utilized to develop Final Plot No. 247/2 of respondent nos.2 to 4.

3. Also the letter dated 06 November, 2020 addressed by the municipal corporation to the petitioners is placed on record. In such letter, it is clarified that in the development of Final Plot No.247/2, no area in relation to Final Plot No.247/3 of the petitioner has been utilized.

4. We accordingly accept the statement as made on behalf of the municipal corporation, as made in the affidavit. The consequence of such statement, as made in the reply as also informed to the petitioners vide letter dated 06 November, 2020, is to the effect that the entire FSI in respect of Final Plot No. 247/3 is available to the petitioners to be utilized by the petitioners and the same is not utilized in the development in regard to Final Plot No.247/2.

5. In view of the clear stand taken by the municipal corporation, further adjudication of the petition is not called for. It is accordingly disposed of in the above terms and accepting such statement as made on behalf of the municipal corporation.

6. It is clarified that we have not examined any of the rival contentions in regard to the rights in respect of the land in question or any dispute which respondent nos.2 to 4 may have in regard to the rights qua such land. All contentions of the parties in that regard are expressly kept open.

7. Disposed of. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]