

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 10013 OF 2019**

Pimpri-Chinchwad Municipal
Corporation, Through Executive
Engineer

.....Petitioner

V/s.

Mr. Kamlesh Dilip Mutha and Ors.

.....Respondents

Mr. Rohit Sakhadeo a/w. Mr. Pushkar Nagpurkar, Advocate for
the petitioner.

None for the respondents.

CORAM : SANDEEP V. MARNE, J.

DATE : 4th MAY, 2023.

P.C. :

1) By this petition, petitioner assails order dated 26.09.2018 passed by the 6th Joint Civil Judge Senior Division, Pune rejecting the application at Exhibit-46. The application was filed by the petitioner/defendant no.2-Municipal Corporation seeking rejection of plaint on account of lack of jurisdiction under Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**).

2) Though the application at Exhibit-46 was not filed by defendant no.2 under the provisions of Order 7 Rule 11 of the Civil Procedure Code, it appears that the trial Court has treated the said application to be the one filed under the provisions of Order 7 Rule 11(d) of the Code. This was possibly done on account of use of the words “rejection of plaint” in the application at Exhibit-46. Without delving further into this issue and assuming that the application was indeed filed by defendant no.2 under the provisions of Order 7 Rule 11 of the Code, I proceed to examine the correctness of the order passed by the trial Court.

3) The suit is essentially filed by the plaintiffs who are the flat purchasers against defendant no.1-Developer. Their grouse in the plaint is that, defendant no.1 could not have consumed additional FSI for construction of additional buildings, which the members of the Society are entitled to use. It is on this count that the plaintiffs have sought various reliefs against the defendant no.1-developer in respect of construction of additional buildings. Thus, the main issue involved in the suit is the entitlement of the Developer to consume the FSI and construct additional buildings. It only by way of consequential relief that the development permissions granted by the Municipal Corporation are challenged in the suit. This is not a suit purely challenging the development permission issued under Section 44 of the MRTP Act. Though, Mr. Sakhdeo is right in contending that there is a remedy of

filing an Appeal under Section 47 of the Act against the development permission issued under Section 44, the pivotal issue involved in the suit is with regard to the right of the Developer to consume additional FSI for construction of additional buildings. This issue can only be gone into by Civil Court and the same cannot be decided in Appeal filed under Section 47 of the Act. Though suits filed challenging orders passed under the provisions of MRTP Act would be barred on account of provisions of Section 149 of the Act, the challenge in the suit is not restricted to only development permission. There is a dispute about existing right to carry out development, which can be decided only by a Civil Court.

4) I therefore find that the application filed by defendant no.2-Municipal Corporation seeking rejection of the plaint was devoid of merits and the same has been rightly rejected by the trial Court. I do not find any ground to interfere in the order of the trial Court. The Writ Petition is dismissed without any order as to costs.

5) All the points with regard to jurisdiction, as well as merits of the case are kept open to be decided at the time of hearing of the suit.

**NEETA
SHAILESH
SAWANT**

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(SANDEEP V. MARNE, J.)