

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 19542 OF 2022

In

FIRST APPEAL 78 OF 2014

Thane Municipal Corporation Through Its
Commissioner, Thane

....PETITIONER

V/S

Dr. Dilip Mansukhlal Shah And Ors.

....RESPONDENT

WITH

CIVIL APPLICATION IN FA NO. 246 OF 2014

In

First Appeal 78 OF 2014

Shri. Dilip Mansukhlals Shah And Ors.

....APPLICANT

V/S

Shri. Chandrakant Kantilal Shah And Ors.

....RESPONDENT

WITH

INTERIM APPLICATION NO. 1132 OF 2019

In

First Appeal 78 OF 2014

....

Shri. Sebastian J. Sequeira and Ors.

....PETITIONER

V/S

Mr. Dilip Mahasukhlal Shah And Ors.

....RESPONDENT

Mr. Rubin Vakil a/w Mr. Rishabh Ranka, Mr. Harsh Choksi ,Mr.
Prathamesh Jadhav i/b Kanga & co. for Appellant

Mr. Ram Aapte a/w Mr. Mandar Limaye & Mr. Harshad Nahta for
Applicant / Thane Municipal Corporation

Mr. Bhushan Deshmukh with Prasanna Tare, Ms. Akshada
Shetty for Res no. 1 to 4, 8 to 10 & 27

Mr. Karl Tamboli, Mr. Nitesh Ranavat , Ms. Disha Shetty, Mr.
Mustaquem Baggaria i/b Wadia Ghandy & Co. for Resp. no. 28-A

Mr. Amey Deshpande for respondent nos. 11A to 11H, 12A to C, 13,14,25 &26.

F. M. Sequeira for intervenor in IA/1132/2019

....

**CORAM : K. R. SHRIRAM &
RAJESH S PATIL, JJ.**

DATED : 23rd FEBRUARY 2023

P.C.:

1. Thane Municipal Corporation has filed the present Interim Application seeking directions to the Respondents to hand over land admeasuring 8523.30 square metres out of the suit property in terms of Regulation 11.3 Reservation Credit Certificate (RCC) of Unified Development Control Promotions and Regulations, 2020.

2. The suit property which is the subject matter of this First Appeal (a) is also the subject matter of Special Civil Suit No. 776 of 2011 filed before the Court of Civil Judge, Senior Division, Thane (“**Suit 1**”) and (b) was also the subject matter of Special Civil Suit No. 55 of 2010 filed before the Court of Civil Judge, Senior Division, Thane which has been dismissed vide an Order dated 13th January, 2023 of the Trial Court (“**Suit 2**”). The Plaintiffs in Suit 1, Suit 2 and the Suit from which this First Appeal arises collectively claim to be entitled to approximately 49 percent undivided right, title and interest in the suit property. On the other hand, Respondent Nos. 1 to 4 and 8 contend that none of the Plaintiffs in the aforesaid three Suits are entitled to any part of the suit property, and only Respondent Nos. 1 to 4 and 8 are entitled thereto

(100 percent).

3. By consent of the parties present, the following order is passed:-

(a) Respondent Nos. 1 to 4, 8 to 10 and 28A in this Appeal shall hand over land admeasuring 8523.30 square metres as more particularly described in the present Civil Application for development of DP Roads, after complying with necessary requirements for completing the handing over;

(b) Respondent Nos. 1 to 4, 8 to 10 and 28A shall be entitled to receive 50 percent of the benefits in the form of Reservation Credit Certificate (RCC) under Unified Development Control Promotions and Regulations, 2020 in lieu of handing over of the said Land admeasuring 8523.30 square metres to the Thane Municipal Corporation. The Thane Municipal Corporation shall deposit the balance 50 percent of the Reservation Credit Certificate (RCC) with the Registrar, Civil Court, Senior Division, Thane to secure the claims of the respective parties in Suit 1, Suit 2 and this First Appeal.

(c) Respondent Nos. 1 to 4 and 8 to 10 and 28A shall be entitled to deal with the 50 percent of the Reservation Credit Certificate (RCC) to be handed over to them as per this Order in such manner as they desire without any restriction. Respondent Nos. 1 to 4, 8 to 10 and 28A undertake not to load or utilize the said 50 percent RCC on the suit property until the interim relief is operating against the Respondent Nos. 1 to 4, 8 to 10 and 28A in Suit 1 or Suit 2.

(d) Thane Municipal Corporation hereby undertakes to file within a period of 2 (two) months from today an affidavit providing the total Reservation Credit

Certificate (RCC) benefit which shall be issued in lieu of handing over of the land mentioned in Clause above.

(e) If the Reservation Credit Certificate (RCC) to the extent of 50 percent of the entitlement which is to be deposited with the Registrar, Court of Civil Judge, Senior Division, Thane under Clause above has any validity period and Suit 1 / First Appeal is not disposed before the expiry of the validity period, in such event, the Thane Municipal Corporation agrees and undertakes to extend the validity period thereof from time to time and as may be directed in the proceedings. In the alternative, the period when Suit 1 / this First Appeal is pending shall be excluded while calculating the validity period. Thane Municipal Corporation shall split the Reservation Credit Certificate (RCC) in such quantum as may be requested by Respondent Nos. 1 to 4, 8 to 10 and 28A to facilitate the deposit in court in terms above and to ensure that 50 percent of the total Reservation Credit Certificate (RCC) received from the Thane Municipal Corporation in accordance with Clause hereinabove is deposited with the Registrar, Court of Civil Judge, Senior Division, Thane.

4. Thane Municipal Corporation shall comply with their obligations under the Order dated 25th October 2016 passed by this Court in Civil Application No. 3441 of 2016 in First Appeal No. 78 of 2014 read with Minutes of the Order dated 25th October 2016, within a period of one month from the date of this Order. Thane Municipal Corporation shall file Affidavits of compliance with the said Order dated 25th October 2016 read with Minutes of the Order dated 25th October 2016, within two months from the date of this Order. No extension to Thane Municipal Corporation will be granted and no applications will be entertained.

5. To the aforesaid extent, the interim order operating in Suit

No. 776 of 2011 and Suit No. 55 of 2010 stands modified.

6. It is expressly understood by and between the parties hereto that by virtue of this Order, the respective Plaintiffs in the said suits and the Appellants in First Appeal No. 78 of 2014 do not recognise and/or acknowledge any right of any nature whatsoever in favour of Respondent No. 28A in the suit property.

7. Interim Application (stamp) No. 26604 of 2022 is accordingly disposed.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)