

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1886 OF 2021

Aum GM Heights ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr GS Godbole, Senior Advocate, with Nirman Sharma i/b,
Kavita Shah, for the Petitioner.
Mr Kunal Waghmare, for the Respondent-MCGM.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 6th November 2023

PC:-

1. Rule, returnable forthwith.
2. There is an affidavit in reply. The challenge is to a communication from the Municipal Corporation of Greater Mumbai (“MCGM”) of 8th January 2021, a copy of which is at page 128. The communication is that since an occupation certificate was granted to the society building sufficient to accommodate all existing members, the benefit of Regulation 33(7)(B) of DCPR 2034 could not be permitted.
3. We asked for an affidavit in reply to explain this. There is an affidavit in reply. In paragraph 4 from pages 133 to 134 and sub-

paragraphs (a) to (f), it sets out a chronology. Those paragraphs read as follows.

“4. Without prejudice to the aforesaid contentions, I say and submit that facts of the present case are as under: -

(a) I say that in this case, the Redevelopment Proposal was submitted by the Architect of the Petitioner on 25.03.2015.

(b) The earlier old existing buildings of Wing A & C in which the members of registered society were staying was demolished in the month of July 2017 after obtaining IOD issued on 05.10.2016.

(c) The revised IOD was obtained on 17.12.2016 for the change of name of the Petitioner's company. The first Commencement Certificate was obtained on 12.07.2017 for the construction of new wing A & C, while retaining existing wing B of tenants as it is.

(d) The proposal was submitted by Architect on 11.12.2018 under Amend-8. The proposal was rejected on 23.01.2019 by BMC as proposal was submitted prior to 27.05.2016 i.e. before publication of draft DCPR 2034 & as per DCPR provision the benefit under reference 33(7) B was not permissible at that time.

(e) The proposal was again submitted by Architect on 20.12.2019 under Amend-11; however, the proposal was rejected on 27.01.2020 by Chief Engineer (D.P) the proposal with remarks, *“The Architect has submitted amended plans claiming incentive FSI available as per Regulation 33(7)(B) and has requested to grant the approval for the concessions involved in the proposal. As the proposal is submitted before 27.05.2016, the amended plans cannot be processed under the provision of Regulation 33(7)(B) in view of clarification issued by UDD on 13.09.2019 (copy annexed)*

(f) I say that thereafter occupation certificate for rehab portion was issued & the proposal was again submitted by the Architect on 28.08.2020 under amend-12. However; same was rejected with remarks, *“Since OC to Society building is granted for accommodation of all the existing members, the benefit of Regn. 33(7) (B) of DCPR, 2034 is not permissible”*.

5. In view of the factual flow of events elaborated above, the petitioner’s claim for benefit of incentive FSI as per Regulation 33(7)B of DCPR 2034 was disallowed by the competent authorities in given circumstances as per prevailing policy from time to time with due lawful reasoning. Therefore, the petition may be disposed off accordingly.”

4. This Affidavit actually contains no explanation whatsoever. The property is located in Vile Parle West not in the Island City. The initial redevelopment that was taken up was under Regulation 32 read with DCR 30(A)(1). The DCPR 2034 not only carried forward DCR 33(7) of the Development Control Regulations 1991 with some modifications, but also introduced additional provisions, viz., DCR 33(7)(A) and DCR 33 (7)(B). We are concerned with the additional FSI that is allowable under DCR 33(7)(B). Sub-clause (1) says that this DCR applies only where the redevelopment of existing residential housing society is proposed, but excluding buildings covered by DCR 33(7) or DCR 33(7)(A). Therefore, once it is seen that the redevelopment in question was *not* under DCR 33(7) nor under DCR 33 (7)(A), then the operation of DCR 33 (7)(B) could not have been excluded and the Petitioner was entitled to apply and to get that application processed on merits under DCR 33(7)(B).

5. The prayers in the Petition read thus:

“(a) That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus thereby directing the Respondent No.2 Municipal Commissioner, MCGM to forthwith withdraw and/or cancel the impugned orders dated 8.1.2021 rejecting the proposal of the Petitioner for benefits of Regulation 33 (7)(B) of DCPR 2034 being Exhibit U to this Petition.

(b) This Hon’ble Court be pleased to quash and set aside the Impugned Order dated 8.1.2021 passed by the Municipal Commissioner of MCGM, the Respondent No.2, which is annexed as Exhibit U hereto;

(c) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus and direct and order the Respondent Nos. 1 MCGM and 2 Municipal Commissioner of MCGM to accept, approve and act on the proposal dated 10.12.2020, which is annexed as Exhibit Q hereto;”

6. In view of our discussion above, Rule is made absolute in terms of prayer clause (b). We further direct the Municipal Cooperation to process the Petitioner’s proposal dated 10th December 2020 (a copy is at Exhibit “Q”) in accordance with law at the earliest and in any event within 6 weeks.

7. No costs.

(Kamal Khata, J)

(G. S. Patel, J)