

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 28997 OF 2021
WITH
INTERIM APPLICATION (L) NO. 25764 OF 2023
IN
WRIT PETITION (L) NO. 28997 OF 2021
WITH
INTERIM APPLICATION NO. 3426 OF 2022

Dansingh Lalsingh Singh & Ors ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Mayur Khandeparkar, *with Prerak Sharma, i/b SI Shaikh, for the Petitioner/Applicant in both Interim Applications.*
Mr SU Kamdar, *Senior Advocate, with Sanjay Jain, Yadunath Chaudhari, Viraj Jadhav & Kevin Pereira, i/b Chinmaya Acharya, for Respondent No. 4 in WPL/28997/2021.*
Mr AY Sakhare, *Senior Advocate, with Pooja Yadav, i/b Sunil Sonawane, for the Respondent-MCGM.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 1st November 2023

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1. We have heard all sides at some length yesterday. It now emerges that a decision on merits is not required. The statements that are made on either side and agreed between the parties are sufficient for disposal of this Petition.

2. To appreciate the background, a few basic facts will need to be noted.

3. The 5th Respondent is a Society of which the three Petitioners are members. There is now an Interim Application (L) No 25764 of 2023 that seeks transposition of the Society as a co-Petitioner. About 40 individual members are also sought to be joined as Petitioners in a separate Interim Application No 3426 of 2022. The reason the Society was not initially joined as a Petitioner was because it was then under administratorship. If the Society is a Petitioner, then leaving the present three Petitioners in their position undisturbed and joining the Society as a 4th Petitioner is sufficient for our purposes. It is not necessary to join all 40 other members as co-Petitioners. That would only make it much more difficult in terms of amendment.

4. We therefore make the first Interim Application (L) No 25764 of 2023 absolute and allow the society to be transposed as the 4th Petitioner. Amendment is to be carried out by Monday, 6th November 2023 without need of reverification.

5. The second Interim Application No 3426 of 2022 for the reasons stated above is disposed of as infructuous.

6. At Bhavani Shankar Marg, Dadar West or Babarekar Marg, there lies final plot No 746, CS No 115 of TPS IV of the Mahim Division. This was a plot of land owned by the Municipal Corporation. There were two structures on this building known as '*Vision Court*.' The occupants or municipal tenants are members of the 5th Respondent (now "**4th Petitioner Society**"). The 4th Respondent is a developer.

7. On this layout there is a free sale building called '*Vision Crest*.' This is distinct from the rehab buildings known as '*Vision Court*'. Yesterday, by a speaking order, we rejected a Writ Petition filed by two members of the separate and distinct society of *Vision Crest* residents. We also vacated interim relief.

8. Between the developer West Avenue Realtors Pvt Ltd ("**West Avenue**") and the present Society (the newly added 4th Petitioner), there was an agreement which inter alia involved West Avenue carrying out certain repairs, etc., to the *Vision Court* rehab buildings.

9. For our purposes today, what is of relevance are three aspects:

- (i) The FSI that is required to regularise certain irregularities in the *Vision Court* rehab buildings. It makes no difference to us today whether these irregularities were as a result of actions of West Avenue or of members of the Society.
- (ii) The second aspect is the acquisition by the West Avenue of additional FSI for further development.

- (iii) There is a third aspect regarding the relocation of a Recreational Ground (“RG”).

10. We will dispense with the third aspect quickly in view of the statement made by Mr Kamdar on behalf of West Avenue. The Society and its members objected to the proposed relocation of the RG to the west of the plot layout. Mr Kamdar maintained that a larger RG was being provided and was accessible. The Society did not want that relocation. On instructions, Mr Kamdar made a statement yesterday, and which we accept now formally, that there will be no change in the original location of the RG and the paved RG. Both will be retained as shown in the original plans that are annexed at page 13 of the Interim Application (L) No 25764 of 2023. That statement is noted and accepted as an undertaking to the Court.

11. For the purposes of regularisation of *Vision Court*, an area of 226.81 sq mts of FSI is required. This is considerably less than the amount of FSI that West Avenue says that it had subsequently acquired from the Municipal Corporation of Greater Mumbai (“MCGM”) against payment of a substantial amount. The MCGM has not permitted West Avenue to utilise this 226.81 sq mts.

12. Mr Kamdar and Mr Jain on instructions make a statement that the 4th Petitioner society will be at liberty to apply to the MCGM for and to utilise this FSI of 226.81 sq mts for the regularisation but that this should be delinked and separated from

the utilisation of the balance FSI acquired by West Avenue for its further development proposed on the plot.

13. Mr Khandeparkar, learned Advocate for the Petitioners, agrees that so long as there is sufficient FSI available for regularisation of the Society building and this is not used or even applied to be used by West Avenue, the Petitioners have no other grievance or complaint.

14. We accept both statements.

15. Mr Sakhare, learned Senior Advocate for the MCGM, states that a independent and separate proposal by the Society through its own architects or consultants will be accepted and processed in accordance with the law and subject to such other compliances as may be necessary for the utilisation of 226.81 sq mts FSI for regularisation of any irregularities that may have been detected or noticed by the MCGM in the residential building no 1 known as *Vision Court* and which is the property of the 4th Petitioner society.

16. We clarify that it is agreed before us that this area of 226.81 sq mts FSI will not be available to West Avenue Realtors for any development that it proposes on the subject plot or the layout in any fashion that it wishes to propose. This necessarily means that whatever FSI West Avenue may have obtained, an amount of 226.81 sq mts from that acquired FSI is and will always remain unavailable to West Avenue Realtors for utilisation in its building proposals.

This area/FSI is exclusively available to the 4th Petitioner Society for regularisation of any irregularities in Vision Court.

17. With this clear demarcation, it is not necessary to enter into any larger controversy. The Petition can be disposed of in these terms. So ordered.

18. All other interim and ad-interim orders stand vacated.

19. In the facts and circumstances of the case there will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)