

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3623 OF 2023

Jamshyd N Godrej & Anr ...Petitioner
Versus
 State of Maharashtra & Ors ...Respondent

Mr Darius J Khambata, Senior Advocate, with Bhushan Deshmukh & Tushar Hathiramani, i/b Bachubhai Munim & Co, for the Petitioner.

Mrs Jyoti Chavan, Addl GP, for the Respondent-State.

Ms Rupali Adhate, with Kunal Waghmare, i/b Sunil Sonawane, for the Respondent-MCGM.

Mr Janak Dwarkadas, Senior Advocate, with Mr Zal Andhyarujina, Senior Advocate, with Shanay Shah, Darshan Mehta & Aaditya Mapara, i/b Dhruve Liladhar & Co, for Respondent No6.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 12th January 2024

PC:-

Digitally
signed by
SHEPHALI
SANJAY
MORMARE
Date:
2024.01.15
10:52:53
+0530

1. We have heard Mr Khambata, learned Senior Counsel for the Petitioners for some time.

2. The prayers in the Petition at pages 20 and 21 read as follows:
 - (a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, order or direction in the nature of Mandamus directing Respondent Nos.

2 to 5 not to process and sanction the plans submitted by Respondent No. 6 for construction on the Subject Property contrary to the height restriction and open space covenants contained in registered documents in relation to the Subject Property and for a height more than the restricted height and for a plinth larger than the existing plinth reducing the open space covenant under the registered documents;

- (b) that this Hon'ble Court be pleased to direct Respondent No.3 to decide the representation dated 20th September 2023 (Exhibit 'N' hereto) made by the Petitioners through their Architect after granting an opportunity of hearing to the Petitioners in accordance with law and pass a speaking order on such representation within a period of four weeks or within such time that this Hon'ble Court deems fit."

3. As regards prayer clause (a), we do not think it is possible for us to direct any authority to decide an application in a particular fashion.

4. Prayer clause (b), however, seeks a direction to the 3rd Respondent, the Municipal Commissioner of the Municipal Corporation of Greater SeptemberSeptember("MCGM") to decide the Petitioner's representation oSeptemberptember 2023 (Exhibit "N") and while doing so to grant the Petitioners an opportunity of hearing. The prayer is for a speaking order on that representation.

5. Very briefly stated, the contention of the Petitioner is that the property acquired by the 6th Respondent was subject to certain

negative covenants. Leaving aside any civil dispute between the Petitioner and the 6th Respondent, the case is that while sanctioning or granting development permission on the property acquired by the 6th Respondent, the planning authority, viz., the MCGM must have regard to all circumstances. This would include the restrictions imposed by the negative covenant.

6. We are expressing no opinion on the rival contentions in this regard for it is Mr Dwarkadas's case for the contesting 6th Respondent that there is no element of public law involved in such a prayer. It is purely a civil dispute between the Petitioners and the 6th Respondent.

7. But the Petitioners have made a representation to the MCGM. Mr Khambata has a case to make, he submits, that while granting or refusing permission, any covenant that runs with the land must be considered.

8. We see no reason why we should pre-empt a decision by the planning authority one way or the other. Obviously, while deciding any such application all contentions on both sides must be and are expressly kept open.

9. What we do require, however, is that the decision be taken at a higher level and not by an Assistant Engineer. Ms Adhate for the MCGM tells us that the Chief Engineer, Development Plan, Respondent No 4 reports directly to the Municipal Commissioner.

She submits that it would be appropriate if the Chief Engineer decided the representation at Exhibit “N”.

10. We permit both sides to file their respective submissions, and these must be concise and comprehensible, before the Chief Engineer, the 4th Respondent by 19th January 2024. The Petitioners will be entitled to supplement the representation already made.

11. We believe it would be in the fitness of things if both parties were to be heard by the Chief Engineer. After all it is the 6th Respondent that has submitted a proposal for redevelopment, and this is being opposed by the Petitioners. All contentions are expressly kept open including those in the Petition. No further filings are to be done before the Chief Engineer. We take the liberty of scheduling a meeting at 11.00 am in the chamber of the Chief Engineer on 5th February 2024. He is required to pass a reasoned order thereafter as expeditiously as possible and in any event by 20th February 2024.

12. The Petition is disposed of in these terms. There will be no order as to costs.

13. Both sides are required to provide a responsive email address for communications by the Chief Engineer.

(Kamal Khata, J)

(G. S. Patel, J)