

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3834 OF 2024

Shree Ranka Kothari Kanugo Realtors and Ors.

.. Petitioners

Vs.

Municipal Corporation of Greater Mumbai
and Ors.

.. Respondents

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Mr. Sharan Jagtiani, Senior Advocate a/w. Mr. Naushad Engineer, Senior Advocate, Mr. Sharad Bansal, Mr. Krishkumar A. Jain and Mr. Kalpesh Bandre i/b. Mr. Ritesh K. Jain for the Petitioner.

Mr. Anoop Patil a/w. Ms. Pushpa Yadav i/b. Ms. Komal Punjabi and Ms. Rutuja Bodake, advocate for respondent no.1 – BMC.

Mr. Manish Upadye, AGP for respondent – State.

Mr. Nikhil Sakhardande, Senior Advocate a/w. Mr. Rubin Vakil, Mr. Prathamesh Jadhav i/b. M/s.Kanga & Co, advocate for respondent nos.5 to 7.

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CORAM : G.S. KULKARNI &
MANJUSHA DESHPANDE, JJ.

DATE : 3rd SEPTEMBER, 2025.

P.C. :

This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs.

(a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction in the nature of mandamus under Article 226 of the Constitution of India directing the Respondent Nos. 1 to 4 Municipal authorities to consider, process and/or restore and grant the applications made by the

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Petitioners Architect on 23rd June, 2021 read with Petitioners Advocate's letter dated 10 October 2022, November, 2022 and 3 April 2023, for redevelopment of the Petitioners' subject property, in accordance with MRTP Act, 1966 and the Development Control Regulations in force and, not to take into consideration any irrelevant and extraneous factors.

(6) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari calling for records and proceedings from Respondent Municipal Corporation pertaining to its decision and opinions inter-alia contained in letters/communications dated 15th July 2021, 5th January 2022 and 13th June 2022 to not process and grant Petitioners applications for grant of planning permissions and after examining its Validity, legality and propriety the same be quashed and set aside.”

2. We find from the record that the petition is to be taken up for final hearing in pursuance of an order dated 22nd November, 2024.

3 We had accordingly heard the proceedings for some time. On perusal of the record with the assistance of the learned senior counsel for the parties, we find that there is a substantive suit filed by respondent nos.5 to 7 being Suit No.261 of 2011, which is pending. The petitioner is defendant in the suit (defendant no.34). In our opinion, there are disputes which in fact revolve around the rights, Respondent nos. 5 to 7 are asserting *vis-a-vis* the rights which the petitioners intend to assert, subject matter of the pending civil suit.

4. It is on such conspectus that the relief against the Municipal Corporation is prayed for in the present petition in terms of the challenge noted by us hereinabove. In these circumstances, we are of the clear opinion that it cannot be accepted to be any legal position that the Civil Court is precluded from examining any such legal right which the parties are asserting.

5. We may also observe that although this petition was admitted by an order dated 18th June, 2013, considering the decision of the division bench of this court in the case of *Vijay Ghorage and Ors. Vs. The State of Maharashtra and Ors.* passed in Writ Petition No.8452 of 2022 (Coram : Mohit S. Shah, C.J. and M.S. Sanklecha, J.) which considers the position in law as laid down by the Hon'ble Supreme Court, in *Kendriya Vidyalaya Sangathan and Anr. Vs. Subhas Sharma,¹ and Rajeev Kumar and Anr. Vs. Hemraj Singh Chauhan and Ors.²*, we are of the clear opinion that at this stage of the proceedings the parties need to be relegated, to assert their rights in the pending civil suit including in terms of the reliefs prayed for in the present petition. Petitioners thus are certainly not precluded to assert such rights which are already being asserted in the pending civil suit and seek such reliefs as the law may permit including against the Municipal Corporation.

1 (2002) 4 SCC 145

2 (2010) 4 SCC 554

6. Thus, considering the interests of both the parties and the nature and complexion of their rights, which are being asserted in the present petition, we are inclined to dispose of this petition in terms of the following orders:

:: ORDER ::

- (a) We accept the petitioners' contention that the petitioners be permitted to espouse the liberty to amend Interim Application No.709 of 2022 filed in the Suit No.261 of 2011 as may be permissible in law to bring the subsequent events on record as also to implead the Municipal Corporation of Greater Mumbai and/or any other authorities as parties to the suit. The petitioners would accordingly be at liberty to pursue the said interim application as may be amended.
- (b) The petitioners certainly have the liberty to request the learned Single Judge to decide the interim application expeditiously;
- (c) Needless to observe that the petitioners pursuing the Interim Application No.709 of 2022, in the civil suit is without prejudice to the rights and contentions of the petitioners as also of the respondents to pursue any other pending interim applications in the said suit;

- (d) We find that there are proceedings pending before the Maharashtra Revenue Tribunal (Review Application [L.] No.379 of 2024 and Appeal No.9 of 2024). In the peculiar facts and circumstances of the case, we are of the opinion that the same need to be disposed of expeditiously. Let the same be disposed of within a period of three months from today;
- (e) All contentions of the parties in that regard are expressly kept open;
- (f) Writ Petition stands disposed of in the aforesaid terms keeping open all contentions of the parties to be now pursued in the pending proceedings;
- (g) We certify that in the event the petitioners face any legal impediment to seek reliefs in the civil suit against the Municipal Corporation, liberty to the Petitioners to revive the present proceedings;
- (h) Rule stands accordingly discharged. No costs.

[MANJUSHA DESHPANDE, J.]

[G.S. KULKARNI, J.]