

IN THE HIGH COURT JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2287 OF 2010

1.D.B.Realty Ltd. & Anr. ...Petitioners

vs.

1.State of Maharashtra & Ors. ...Respondents

Mr.V.R.Dhond with Ms.Jyoti Sinha i/b.
M/s.Negandhi, Shah, Himayatullah, for
Petitioners.

Ms.S.M.Dandekar, AGP for Respondents.

**CORAM: D.K.DESHMUKH &
N.D.DESHPANDE, JJ.**

DATED: 14th February, 2011

P.C.:

1. The petition is not on board for final hearing. By consent it is taken up for final hearing.

2. By this petition, the petitioners

challenge the directions issued under Section 37(1) read with Section 154 of the Maharashtra Regional and Town Planning Act, 1966. The State Government on 15.9.2010 issued directions to all Municipal Corporations and Municipal Councils to initiate process for modification in their sanctioned Development Control Regulations to include new regulations. It was directed that the Planning Authority shall publish a requisite notice inviting suggestions and/or objections to the proposed modifications and then after completing the legal formalities as required under Section 37(1) of the M.R.T.P. Act submit the proposed modification proposal with suggestions and objections received from the public to the Government for final sanction. Then comes part which is challenged in the petition which reads as under:-

pending sanction to these modifications by the Government under Section 37(2) of the said Act, the aforementioned modification shall come into effect forthwith.

The modifications made in the Development Control Regulations in terms of provisions of Section 37 of the Act come into effect from the date they are sanctioned by the State Government. Sub-section (2) of Section 37 of the Act reads as under:-

37(2). The State Government may, [make such enquiry as it may consider necessary] and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly.

It is, thus, clear that under Section 37(2) of the Act the modification in the plan become effective only after they are sanctioned by the State Government. The learned Counsel appearing

for the State Government relied on the provisions of Section 154 of the Act to claim that under Section 154 of the Act the Government has the power to make the modification effective even before they are sanctioned. Section 154 of the Act reads as under:-

154. Control by State Government:-

(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

Perusal of the above quoted provisions shows that the State Government has power to issue directions to the Planning Authority etc. for the efficient administration of the Act. It implies, therefore, that under Section 154 of the Act a direction cannot be issued which will run contrary to the provisions of the Act. The provisions of Section 37 of the Act shows as to how minor modification can be brought about and

given effect. The scheme of Section 37 of the Act is that the modifications that are to be made in the final development plan come into effect only after they are sanctioned by the State Government and not before it. Therefore, the direction which is impugned in the petition is clearly contrary to the provisions of Section 37 of the Act and that could not have been issued by the State Government under Section 154 of the Act.

3. In the result, therefore, the petition succeeds and is allowed. Clause (D) of the order of the State Government dated 15.9.2010 which reads thus;

D. Pending sanction to these modification by the Govt. under section 37(2) of the said Act, the aforementioned modification shall come into effect forthwith.

is set aside.

Rule is made absolute accordingly. No order as to costs. This order will not come in

the way of the petitioners challenging the modification in case any final modification is made in the final development plan and in case the petitioners feel aggrieved by it.

(D.K.DESHMUKH, J.)

(N.D.DESHPANDE, J.)