

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 123 OF 2016**

Sandeep Thakur
versus
State of Maharashtra & Ors.

.. Petitioner

.. Respondents

Mr. Sandeep Thakur – Petitioner in person.
Mr. C. P. Yadav – AGP for State Respondent No. 1.
Mr. S. V. Marne for Respondent No. 2.
Mr. B. B. Sharma for Respondent No. 3.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

Date of Reserving the Order: 23 September 2016

Date of Pronouncing the Order: 05 October 2016

ORDER:

- 1] We have heard the learned counsel for the parties.
- 2] We issue Rule in the matter.
- 3] The petitioner, who appears in person presses for interim relief in terms of prayer clause (E), which reads thus :

“(E) That pending the hearing and final disposal of this writ petition, this Honourable Court be pleased to direct Respondent No.2 NMMC to require the developers to provide 1 parking space for 1 tenement of built area upto 45 sq. mtr. / carpet area upto 35 sqm. As directed by the Principal Secretary in his Exhibit K Report and this Hon'ble Court in it's Exhibit L Order.”

4] The Development Control Regulations (DCR) of the Navi Mumbai Municipal Council / Corporation (NMMC) as they presently stand, make the following provisions in respect of parking spaces:-

“1. (One) Parking space for :

- (i) every 4 tenements having carpet area upto 35 sq. meters each;*
- (ii) every 2 tenements having carpet area exceeding 35 sq. Meters each*
- (iii) every 1 tenement having carpet area exceeding 45 sq. meters but not exceeding 60 sq. meters each*
- (iv) every ½ tenements having carpet area exceeding 60 sq. meters in addition to parking spaces specified in (i) (ii) & (iii)”.*

5] The petitioner, had earlier instituted public interest litigation 34 of 2011 pointing out the severe problems faced by the residents and commuters within the jurisdiction of NMMC, on account of lack of reasonable parking spaces. The Division Bench of this Court comprising (Smt. Ranjana Desai & Rajesh G. Ketkar, JJ.) by order dated 22 June 2011 had directed the Principal Secretary, Urban Development Department to hear the petitioner and to pass a detailed order upon the the issues raised by the petitioner.

6] The Principal Secretary (UD-I) made a detailed order dated 18 July 2011 accepting the contention of the petitioner that a scientific survey needs to be conducted and on the basis of the same, necessary decision be taken by the NMMC to increase the parking spaces.

7] The Division Bench of this court, by its order dated 7 September 2011 disposed of PIL 34 of 2011, *inter alia* in the following terms :

"2. The scientific survey may be started immediately. One year's time is an outer limit. It may be completed as expeditiously as possible and the procedure under Section 37, to amend the D C Regulations, may also be adopted and completed as early as possible. Six months' time limit laid down by the Principal Secretary (UD-I) for that purpose is merely an outer limit. Efforts may be made to complete the procedure as early as possible.

3. The petitioner's grievance is redressed as of today, hence the petition is disposed of."

8] Mr. Sunil Hajare, the Assistant Director of Town Planning, NMMC has filed an affidavit on behalf of NMMC (respondent no. 2) on 22 September 2016. From the perusal of the affidavit, it is quite clear that the NMMC has completely ignored the directions issued by this court in its order dated 7 September 2011. No scientific survey, as directed, came to be conducted. NMMC did not even bother to apply for any extension of time or seek the recall of the directions issued. At least *prima facie*, this amounts to disobedience of the orders made by this court. We are therefore, inclined to issue notice to the Commissioner of NMMC to show cause as to why action under the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India be not taken in the matter. The Commissioner of NMMC is therefore directed to show cause in this regard within a period of four weeks from today.

9] The affidavit of NMMC however states that an Expert Committee was constituted under the Chairmanship of Principal Secretary, Urban Development Department, for preparation of all inclusive of standardized development control regulations for the entire Mumbai Metropolitan Regional Area (exclusive of Municipal Corporation of Greater Mumbai). The said Committee has submitted a report which is

pending consideration by the State Government. The report has made the following recommendations on the issue of parking spaces:

- (i) *3 parking for 1 tenement having built up area of more than 70 sq. mtrs.*
- (ii) *2 parking for tenement having built up area between 50 to less than 70 sq. mtrs*
- (iii) *2 parking for every two tenements having built up area between 35 sq. mtrs to less than 50 sq. mtrs. and*
- (iv) *1 parking for every two tenements having built up area less than 35 sq. mtrs.*

10] Mr. Marne, the learned counsel for NMMC in the light of the aforesaid material on record did not contend that the existing regulations relating to parking spaces are adequate or that there is no necessity to revise said regulations, but, he submitted that since the State Government has indicated that it proposes to come out with comprehensive and integrated development control regulations in the Municipal Corporations in the Mumbai Metropolitan Region (excluding Greater Mumbai), the NMMC did not forward any proposals for revising the regulations. Mr. Marne also submitted that the existing regulations for parking spaces are better than the regulations made by City and Industrial Development Corporation of Maharashtra (CIDCO) and the Thane Municipal Corporation. Mr. Marne submitted that in case directions are issued by this court, the NMMC will forward proposals for revision of regulations to the State Government within some time bound schedule.

11] On the other hand, Mr. Sandeep Thakur, the petitioner who appears in person submitted that the lethargy and the disobedience of

the earlier directions issued by this court is only to enable builders and developers to commercially exploit property, which will otherwise be required to be kept aside as parking spaces. Mr. Thakur submits even the scientific survey conducted by NMMC in the year 2010-2011 had indicated that the existing regulations for parking spaces are totally inadequate. This position was in fact accepted by the Commissioner NMMC, as reflected in the order dated 18 July 2011 made by the Principal Secretary (UD). Mr. Thakur pointed out that despite directions issued by this court in its order dated 7 September 2011, the NMMC has neither carried out any further scientific survey nor has yet taken steps to revise the regulations for parking spaces. Mr. Thakur submitted that if the matters are once again left to NMMC, there will be no progress, even though, by now, the problem on account of inadequate parking spaces has acquired serious proportions.

12] We are conscious that in matters relating to regulations, whether for the purposes of construction of buildings or providing parking spaces, this court, has quite a limited role to play. Normally, these are matters for the Corporation and the State Government to address. However, in the present case, there is really no dispute whatsoever apart from there being overwhelming material on record to establish that the existing regulations relating to parking spaces are woefully inadequate and cry for urgent revision. Whilst, at this stage, we do not propose to make any observations upon the submissions of Mr. Thakur that the lethargy and inaction on the part of NMMC is only to afford benefits to builders and developers, we cannot be oblivious of the serious issues arising out of inadequate parking spaces and matters connected therewith.

13] In the aforesaid regard, reference to the following is necessary:-

- (a) The scientific survey referred to in the order of the Principal Secretary (UD-I) acknowledges that the existing regulations are inadequate to deal with the issue of parking spaces and recommends *inter alia* one parking space for tenement of built up area upto 45 sq. meters (See Exhibit 'K' - pages 47 to 49);
- (b) The statement of the Municipal Commissioner and the Additional Director (Town Planning) of NMMC recorded by the Principal Secretary (UD-I) in his aforesaid order dated 18 July 2011 conceding that the scientific survey had in fact recommended the norm of one parking space for one tenement of built up area upto 45 sq. meters (See Exhibit 'K' – page 48);
- (c) The recommendations as well as directions issued by the Principal Secretary (UD-I) in his order dated 18 July 2011 requiring NMMC to undertake yet another scientific survey and thereafter, to amend regulations and provide parking spaces for tenements upto 35 sq. meters of carpet area. In fact, the Principal Secretary (UD-I) had directed completion of this exercise within a period of six months from the date of his order dated 18 July 2011. This means that the exercise of revising the regulations for parking spaces had to be completed, latest by 18 January 2012;
- (d) The order dated 7 September 2011 made by this court in PIL 34 of 2011 had in fact directed the NMMC and the State Government to comply with the directions issued by the Principal Secretary (UD-I) within a period of six months (See Exhibit 'L' – pages 50 to 52);
- (e) By order dated 7 September 2011, this court issued directions to undertake the fresh scientific survey immediately. The time limit indicated, was clarified as being only an outer

limit. Directions were also issued to comply with procedures under Section 37 of the MRTP Act, to amend D.C. Regulations as early as possible. (See Exhibit 'L' – pages 50 to 52)

14] Despite the aforesaid, at least in the affidavit dated 22 September 2016 filed on behalf of the NMMC, there is no suitable explanation for the non compliance of directions issued by the Principal Secretary (UD-I) in his order dated 18 July 2011, which directions were reiterated by this court in its order dated 7 September 2011 in PIL 34 of 2011. Further, the affidavit dated 22 September 2016 also makes reference to the report of the Expert Committee constituted under the Chairmanship of the Principal Secretary (UD) for the preparation of all inclusive and standardized Development Control Regulations for the entire Mumbai Metropolitan Regional Area (exclusive of Municipal Corporation of Greater Mumbai). It is necessary to note that the Commissioner of NMMC is also one of the members of such Expert Committee. The Expert Committee in its report has recommended that the parking norms for Mumbai Metropolitan Region (except MCGM), should *inter alia* provide 3 parking spaces for 1 tenement having built up area of more than 70 sq. meters; 2 parking spaces for tenement having built up area between 50 to to 70 sq, meters; 2 parking spaces for every 2 tenements having built up area between 35 sq. meters to 50 sq. meters; and 1 parking space for every 2 tenements having built up area less than 35 sq. meters.

15] Thus, there is overwhelming material on record to indicate that the existing regulations relating to parking spaces, which are in force since last several years are grossly inadequate to deal with the issues of parking, traffic congestion etc. and further, both Expert Committees

as well as the Executive Officers of the NMMC as well as the State Government have in fact, recommended, amongst others, provision of one parking space for every tenement having built up area upto 45 sq. meters or carpet area upto 35 sq. meters. The recommendations of the Experts relate back to the years 2010 to 2012. By now, the problem of parking spaces has further increased and has acquired serious proportions. In these circumstances, even we are satisfied that at the very minimum, the NMMC is required to make provisions for insisting upon one parking space for every tenement having built up area upto 45 sq. meters / carpet area upto 35 sq. meters.

16] There is substantial increase in the population and number of vehicles within the jurisdiction of NMMC. On account of the present regulations, which require the builders and developers to provide only one parking space for every four tenements having carpet area upto 35 sq. meters each, the problem of parking of vehicles has assumed very serious proportions. On account of inadequate parking spaces in buildings and co-operative housing society projects, invariably several vehicles are parked upon public roads and in other public places. This results in traffic congestion, accidents and vehicular pollution. There is no gain saying that the members of the public are very severely prejudiced as a result. By now, it is accepted that the right to open spaces, proper roads, clean and healthy environment is within the ambit of Article 21 of the Constitution of India.¹ The NMMC as well as the State Authorities, despite acknowledgement the present regulations are woefully inadequate and cry for urgent revision, have failed to take steps, even though, such steps were directed by the Principal Secretary (UD) and this Court in its order dated 7 September 2011 in PIL 34 of 2011. Inaction and lethargy, whatever may be the

¹ (2014) 4 SCC 538 (Paragraph 30) Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr.

motive cannot be countenanced in a situation of this nature.

17] Upon cumulative consideration of the aforesaid facts and circumstances, we issue the following directions:-

- (a) The Commissioner, NMMC is directed to show cause as to why action under Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India be not initiated for non compliance with the directions issued in the order dated 7 September 2011 in PIL 34 of 2011. Such cause to be shown within a period of four weeks from today;
- (b) The NMMC and the State Government to comply with the directions issued by this Court in its order dated 7 September 2011 in PIL 34 of 2011 as expeditiously as possible and in any case within a period of three months from today.
- (c) Taking into consideration the virtually undisputed material and circumstances referred to in paragraphs 13, 14 and 15 of this order, we grant interim relief in terms of prayer clause (E) of the petition, which is transcribed in paragraph 3 of this order. This means that the NMMC, in any permission for construction / development which it may issue hereafter, shall necessarily include a condition that the owner / builder / developer provides at least one parking space for one tenement having built up area upto 45 sq. meters or carpet area upto 35 sq. meters.

18] Place the matter for further consideration on 18 November 2016.

CHIEF JUSTICE

(M. S. SONAK, J.)

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